

Bangladesh Training Module on
**GENDER DIMENSIONS OF CRIMINAL
JUSTICE RESPONSES
TO TERRORISM**

The Bangladesh Training Module on Gender Dimensions of Criminal Justice Responses to Terrorism is an initiative funded by the **Government of Japan**.

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This handbook is a technical tool that has been developed for training purposes to support national practitioners to enhance their skills and knowledge on gender dimensions of criminal justice responses to terrorism.

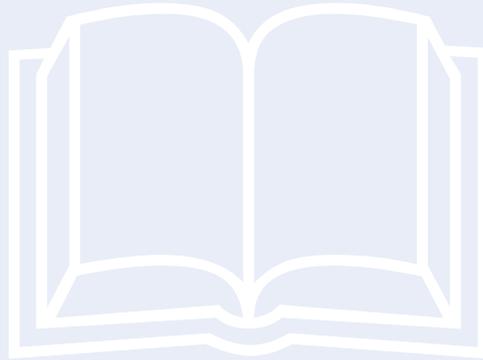
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Background, Aims and Methodology of the Training Module

The development of this Training Module is made possible by funding of the Government of Japan for the project *Strengthening Capacity of States to Counter Terrorism and Transnational Organized Crime in Bangladesh and Maldives*.

Background

In the course of their cooperation, UNODC and authorities of Bangladesh determined that the effectiveness of capacity-building initiatives on criminal justice responses to counter-terrorism would be significantly enhanced and made more sustainable if training materials customized to Bangladesh context on key aspects of criminal justice responses to terrorism were developed and made available to criminal justice sector practitioners and training institutions in the country.

In May 2019, UNODC published a *Handbook on Gender Dimensions of Criminal Justice Responses to Terrorism*. The present Training Module is intended to provide training materials tailored to Bangladesh's laws and context complementing the UNODC Handbook. Users of the present training tool can therefore refer to the UNODC Handbook for more in-depth analysis of the international legal and policy framework and for additional comparative materials highlighting the experience and interesting practices developed in other countries.

The present publication on *Gender Dimensions of Criminal Justice Responses* as a Training Module is intended to serve as a tool to train the criminal justice actors and is not to be seen as a body of research offering situational analysis on terrorism or its gendered premise in Bangladesh. The publication thus has a focused nature and its intent is to examine the gender aspects of criminalization and adjudication of terrorism-related offences and to train the criminal justice sector participants accordingly in this regard. The examples and activities that have been used in the Module are illustrative and at times hypothetical; the real-life personal experiences of the trainers at different training facilities, being intertwined with the training tool, can either substantiate or contradict such examples. The Module also should be viewed as complementary to other UNODC publications on terrorism, prevention of violent extremism, and criminal justice, among others, which will provide for a holistic perspective.

To guide the drafting of the present Training Module, an Online Informal Meeting was organized in Bangladesh on 7 July 2020. The participants of the meeting were requested to guide the drafting of the module. Subsequently, on 10 August 2020, an Online Expert Round Table was organized. The Round Table brought together government officials, civil society, academia, representatives from training facilities, and experts from different UN agencies to review the draft module and provide comments and suggestions on its content. The participants of the Round Table discussed the objectives, methodology, structure, and chapters of the draft Module and proposed adjustments as well as changes for refining the same. During the Round Table, further steps on use of the Training Module by training institutions such as the Police Staff College and the Judicial Administration Training Institute were discussed.

Post Round Table, comments were sought, among others, from the Counter Terrorism and Transnational Crime Unit of the Dhaka Metropolitan Police, the Bangladesh Institute of Peace and Security Studies, the Judicial Administration Training Institute, and the University of Dhaka for additional support and materials.

Aims and Methodology of the Training Module

i. Objective and Target Audience

The principal objective of this Training Module is to provide a tool for training public prosecutors, judges, investigators, law enforcing officials working in the counter-terrorism field or on terrorism-related cases, as well as lawyers in private practice, and gender equality and women's rights advocates in Bangladesh.

In addition to being a training tool, the Module can serve as a manual for self-study and as a reference book for practitioners to look up Bangladeshi, as well as regional and international practices on human rights questions arising in the criminal justice response to terrorism.

ii. Methodology

The training method employed by the Training Module is designed to empower adult participants to effectively discharge their professional duties and responsibilities. The methodology adopted has, therefore, the following four characteristics:

- a) practical (as adult professionals learn by doing)
- b) interactive (in order to capitalize on the collective intelligence and expertise of the group)
- c) participant-centred (as the entire learning experience must focus on the participants' needs and expectations)
- d) based on a problem-solving approach (in order to immerse the participants in a real-life stimulating learning experience).

These are learning methods that encourage and indeed require participants to play an active role and take responsibility for their learning. Participants will be expected to work both as part of a small group, as well as individually, to explore problems through case studies and discussion platforms, and take initiatives that allow them to acquire the practical knowledge and skills that they need in their workplace. The Training Module offers key learning objectives, lecture material, activities and case studies to enhance discussion and knowledge sharing. The Training Module does not aim at providing abstract or theoretical knowledge of legal concepts, but rather to encourage trainers and participants to reflect upon the practical application and implications of the norms and principles discussed, and to think about the policy and ethical underpinnings of legal principles.

The Training Module may represent a useful tool both for the trainer(s) and the participants. The trainers will have to determine the most appropriate moment to distribute the Module. In some cases, they might want to distribute it at the beginning of the course. In other cases, they might esteem more appropriate to share the Module in its entirety with the training participants only at the end of the training. In this case, trainers should provide copies of assignments and other relevant materials already during the training.

In support to the participant-centred and problem-solving approach underlying the Training Module, a number of training tools are used. To facilitate the use of these tools, they are identified throughout the Training Module by graphic symbols.

These are the symbols used:

| | |
|---|---|
| <p>Learning objectives</p>  | <p>Contains a brief overview of the key topics on which the respective Chapter intends to impart knowledge.</p> |
| <p>Focus boxes</p>  | <p>Users are introduced by a series of boxes to topics of specific interest, providing more in-depth information or examples, and allowing a comparative approach to the subject.</p> |
| <p>Case studies</p>  | <p>Studies of real cases pertaining to the subject matter of the Module from Bangladesh.</p> |
| <p>Activities</p>  | <p>These boxes offer ideas for exploring how the various topics covered in the Module are handled in practice in Bangladesh. Participants are encouraged to apply their skills and share their experience. Some of the activities are discussion points, others are hypothetical case studies which can also be used to practice drafting an application or a motion on a point of law, or as basis for a mock hearing. During workshops, trainers may propose an activity to stimulate an initial discussion among participants, or to encourage application of the legal concepts to a hypothetical practical case. Readers studying independently will also be able to use the activity boxes to focus on the practical application of knowledge acquired.</p> |
| <p>Self-assessment questions</p>  | <p>Assessment questions included at the end of each Chapter provide a means to test one's knowledge on the topics covered. These questions are primarily intended as a tool for self-assessment by learners using the Modules for self-study. The assessment questions can also be used by trainers as a preliminary tool to identify training needs and the level of competence of participants, as discussion points during a training session, or to test impact at the end of a training session.</p> |
| <p>Tools</p>  | <p>These tools offer additional materials, including practical guides, manuals, treaties and model laws, databases and other sources, to assist criminal justice practitioners in applying the principles discussed.</p> |
| <p>Further reading</p>  | <p>This tool offers reference to additional material with a view to broadening the reader's knowledge of the topics discussed.</p> |
| <p>Reference</p>  | <p>The reference symbol is used to inform users of the location of information covering the same or connected topics in other UNODC publications and resources.</p> |



INTRODUCTION

This Module examines gender dimensions of criminal justice responses to terrorism in the Bangladesh context. It has been developed by UNODC, in cooperation with criminal justice officials of Bangladesh, on the basis of the conviction that an effective criminal justice response to terrorism must include a gender perspective, adopt an approach based on gender mainstreaming and human rights, and take account of the multifaceted and distinct ways that women and men are involved in, and impacted by, terrorist acts. Adopting such an approach will both strengthen the effectiveness of the criminal justice response to terrorism and respect for women's rights in this context. As such, this Module aims to support criminal justice practitioners of Bangladesh to enhance the integration of a gender perspective in the investigation, prosecution and adjudication of terrorism cases, in the provision of assistance to victims of terrorism, and in detention in relation to terrorism-related offences:

The intersection of gender, terrorism and counter-terrorism

Gender intersects with terrorism in many ways. The patterns of women's and men's involvement in terrorism, including voluntary and forced association/recruitment, motivations, and roles, may differ. Terrorism can also have different impacts on women and men as victims.

The roles that women and men fulfil in supporting or carrying out acts of terrorism may also have a gendered premise. Men continue to hold the vast majority of ideological and military leadership positions in terrorist groups and constitute the majority of those engaged in violent operational roles across the world (although women do occupy violent operational positions in some groups).

In many cases, the roles prescribed to women in terrorist groups are closely connected with the religious or ideological doctrines that such groups adhere to. For instance, it is quite common to see the use of Quranic verses in the radical propaganda or media content of Islamist militants that instructs or inspires the protection of the weak – especially the women, among others.¹ This ideology was reflected in the scepticism of Harakat-ul-Jihad-al-Islami Bangladesh, a military outfit created in 1992, with regard to letting women actively participate in jihad; this position was maintained by Ansar-al-Islam as well.² The ideology of 'protecting women' by way of having them in supporting/caregiving roles instead of assertive and violent ones was manifested in the tactics of the old Jama'atulMujahideen Bangladesh (JMB) in the context of Bangladesh. In the Al-Qaida leaning old JMB, women were traditionally used as companions of men, generally for rendering support; though no evidence was found of a separate women's

¹ Asheque Haque, "Role of 'the Female' in Terrorism and Counter-Terrorism in Bangladesh", 1 February 2020. Available at <https://shuddhashar.com/role-of-the-female-in-terrorism-and-counter-terrorism-in-bangladesh-asheque-haque> (accessed on 12 July 2020).

² Mahfuza Liza, "Preventing Female Radicalisation: Perspective of Law Enforcement", presented at the National Conference on Prevention of Violent Extremism from a Gender Perspective, Bangladesh Institute of Peace and Security Studies, November 2018. Available at [http://bipss.org.bd/pdf/Conference%20Report%20\(Gender\).pdf](http://bipss.org.bd/pdf/Conference%20Report%20(Gender).pdf) (accessed on 21 July 2020).

wing as such, daughters and wives of male terrorists became radicalized through family and at times acted as contributors and to spread propaganda among other women.³

The roles of women terrorists in Bangladesh have undergone a paradigm shift lately when neo Jama'at-ul-Mujahideen Bangladesh (neo-JMB) emerged as the pioneer in Bangladesh in terms of involving women in terrorism on a wide scale.⁴ The traditional and peripheral roles of women as wives and caregivers of male terrorists have evolved to those of suicide bombers,⁵ combatants, fundraisers, active preachers/recruiters, and ideologues.⁶

In the wave of neo-JMB in Bangladesh, even though women are taking up more visible roles, literature suggests that the female militants play and would continue to play roles subordinate to men in the terrorist groups since 'both Bangladeshi society, and the ideologies of the Islamist militant outfits are traditionally patriarchal in nature.'⁷ The trend of women's recruitment in radical groups in Bangladesh suggests that women are mostly encouraged or compelled to join after being enticed to that end, and that they lack decision-making capacity in the groups; women's role in terrorism and violent extremism leading to terrorism in the country's context 'is still limited to taking care of the male jihadists, assisting in recruiting and financing', among other acts.'⁸ Women in radicalized groups do not have the training to fight for jihad, [although] they may have the training of self-defence.⁹ Even though there are a growing number of women wings headed by women in different terrorist groups functional at present in Bangladesh, reports suggest that women who lead such wings continue to be subordinate to men and follow the orders of male militants.¹⁰ Global studies have suggested that women and men can be motivated to support or engage in terrorism by similar factors. These include, for example, a wish to effect social change, as a response to grievances about sociopolitical conditions or perceived injustices along political, religious or personal lines, to avenge the death of a spouse or relative; a fanatical commitment to ideological or religious beliefs, or to achieve economic benefits.¹¹ In some cases, however, these considerations do have a gender dimension. Gender-based discrimination and inequality may interact with and exacerbate violations on other grounds, such as race or religion. Other conditions that may lead to women's radicalization include sexual and gender-based violence, lack of economic and educational opportunities, as well as an impaired ability to engage in political forums and exercise their civil and political rights through lawful means.¹²

³ Tipu Sultan, "Preparation for attacks by female terrorist?" (translated from Bangla), *Prothom Alo*, 26 December 2016. Available at <https://www.prothomalo.com/bangladesh/article/1047001> (accessed on 10 July 2020).

⁴ Nazneen Mohsina, "Growing Trends of Female 'Jihadism' in Bangladesh", in *Counter Terrorist Trends and Analyses*, Vol. 9, No. 8 (August 2017), p. 10.

⁵ Mohammad Jamil Khan, Md. Kamrul Hasan, Arifur Rahman Rabbi, "Dhaka sees first female suicide bomber", *Dhaka Tribune*, 25 December 2016. Available at <https://www.dhakatribune.com/bangladesh/crime/2016/12/25/dhaka-sees-first-female-suicide-bomber> (accessed on 12 July 2020).

⁶ Syed Shishir, "On terrorism and female terrorists in Bangladesh" (translated from Bangla), *Dhaka Times*, 5 May 2017. Available at <http://www.dhakatimes24.com/2017/01/05/15043>, quoted in Nazneen Mohsina, "Growing Trends of Female 'Jihadism' in Bangladesh", p. 8.

⁷ Nazneen Mohsina, "Growing Trends of Female 'Jihadism' in Bangladesh", p. 11.

⁸ Mahfuza Liza, "Preventing Female Radicalisation: Perspective of Law Enforcement."

⁹ Ibid.

¹⁰ "Head of the women wing of neo-JMB, Asmani, held on remand" (translated from Bangla), *Prothom Alo*, 5 February 2020. Available at <https://www.prothomalo.com/bangladesh/article/1638253> (accessed on 13 July 2020) (Asmani mentioned that she was carrying out the orders given by Abu Muhammad, Abir Chowdhury, Mehedi Hassan and Abu Dujana).

¹¹ Naureen Chowdhury Fink, Rafia Barakat, and Liat Shetret, "The Roles of Women in Terrorism, Conflict and Violent Extremism", *Policy Brief*, (April 2013), p. 3.

¹² Organization for Security and Co-operation in Europe, "Women and Terrorist Radicalization", February 2013, p. 3.

As discussed in Chapter 2, while many women become associated with terrorist groups as the result of coercion, some join these terrorist groups of their own volition and contribute to the activities of these groups of their own accord.

Terrorist groups across the world recruit a wide number of women and men, girls and boys against their will in a variety of ways, including by abducting them; making threats against them, their families or communities; or relying on spouses or other family members to coerce them. In some cases, there may be a gender component – for example, where women are coerced into supporting terror groups by spouses or family members and due to social convention are unable to refuse.

Women and men may also be differently impacted by terrorist violence as victims. For example, men constitute the majority of state forces engaged in conflicts with these groups through the counter-terrorism response and are, therefore, disproportionately affected by frontline combat. Both women and men may become victims of sexual and gender-based violence (SGBV) perpetrated by terrorist groups, however women and girls are disproportionately impacted by this form of violence. SGBV against women and girls is also used as a specific tactic of terrorism for strategic purposes.

As will be discussed in more detail in Chapter 1, the integration of a gender perspective into national policies, practices and programmes involves examining the needs and experiences of both women and men. This Module, however, principally focuses on the contact of women and girls with the justice system in relation to terrorism in Bangladesh. This is because criminal justice systems have commonly not differentiated between the experiences of women and men and have assumed that they share the same needs and concerns. While such an assumption may initially appear to be gender neutral, in practice, it more often leads to unequal experiences and outcomes, since the institutional design of the criminal justice system often reflects predominantly male priorities, as men typically dominate decision-making at the household, community and political levels. A set of apparently gender-neutral criminal justice responses, therefore, can make room for indirect discrimination against women.

Women as victims

The impact of terrorist activities can be highly gendered. Globally, women are among the victims of generalized acts of terrorist violence, while their health, education and participation in public life are disparately affected by terrorist activities compared to men. The victimhood of women in contact with terrorism and in conflict with counter-terrorism measures is multifaceted; the victimhood permeates across different cohorts of women: women as more vulnerable and susceptible to radical propaganda, women as subordinate members in terrorist groups, and women as targets of terrorist attacks and counter-terrorism measures.

According to a report based on interviews with 50~85 arrested women involved in terrorism or violent extremism leading to terrorism, prepared by the Counter Terrorism and Transnational Crime (CTTC) unit of the Dhaka Metropolitan Police, a wide range of women were not self-motivated. About 47 per cent of the arrestees mentioned more than one reason for radicalization: as per CTTC's analysis, about 21 per cent said they got involved because of their husbands; 7 per cent referred to other family; 3 per cent, 2 per cent and 4 per cent mentioned brother, son, and father, respectively; 2 per cent mentioned an online influence; 4 per cent of the

women referred to a peer; and for 4 per cent, the source of radicalization was a friend.¹³

The available statistics show that a good percentage of women become easy prey for radicalization. It is indeed difficult to dissociate willing women from unwilling women in this regard. Additionally, indoctrination or radicalization does not always happen through softer methods, such as teachings and mentoring. There are reports that suggest that in many cases, women are threatened unless they agree to join the terrorist groups in their activities.¹⁴

Women are recruited for an array of reasons in the context of Bangladesh, one of them being that women arouse less suspicion and it is easier to travel around and get houses rented with a woman by side.¹⁵ Besides, the technique, widely known as the ‘couple module’, uses female members as a distraction and helps militant groups pair up a female and male to identify themselves as husband and wife in order to implement the operational orders.¹⁶ This tactic also affects women negatively as they become targets and victims of counter-terrorism efforts (such as raids) undertaken by the law enforcing agencies.¹⁷

As has been noted in the next chapter, in the context of Bangladesh, reports and literature suggest that women involved with the terrorist groups tend to follow and not lead in terms of making decisions. In many cases, the decisions (ranging from orders for taking up weapons against own will to those for committing suicide) made by the male decision makers severely impact women who are forced to be involved in terrorism.

Furthermore, also as targets of terrorist activities, women stand out as a group. For example, the development activities of several non-governmental organizations (NGOs) that seek to empower women through financial independence and entrepreneurship get targeted by militants for promoting ‘un-Islamic’ behavior.¹⁸ Additionally, attire or movement of women often become a marker of religiousness and/or extremism, and the same is used in the radical propaganda as a ground for attack.

¹³ This is a work in progress and the data is variable. See, Rafiul Islam, “66 pc radicalized by family members”, *The Daily Star*, 20 November 2018. Available at <https://www.thedailystar.net/backpage/news/66pc-radicalised-family-members-1662943> (accessed on 16 July, 2020); Mahfuza Liza, “Preventing Female Radicalisation: Perspective of Law Enforcement”; Sheikh Sabiha Alam, “Women as vulnerable to terrorism” (translated from Bangla), *Prothom Alo*, 5 July 2020. Available at <https://www.prothomalo.com/we-are/article/1667019/> (accessed on 13 July 2020).

¹⁴ Sorwar Alam, Rezwan Biswas, “More than one thousand and five hundred female terrorists active!” (translated from Bangla), *Kaler Kantho*, 31 July 2016. Available at <https://www.kalerkantho.com/print-edition/first-page/2016/07/31/387499> (accessed on 13 July 2020).

¹⁵ Tipu Sultan, “Why females are in terrorism?” (translated from Bangla), *Prothom Alo*, 4 January 2017. Available at <https://www.prothomalo.com/pachmisheli/article/1052175> (accessed on 13 July 2020).

¹⁶ Deepak Acharjee, “Lawmen concerned over ‘rising number of women militants’”, 25 December 2016. Available at <http://www.theindependentbd.com/home/printnews/73780> (accessed on 13 July 2020).

¹⁷ “Female jihadist arrested from a house in Ashulia” (translated from Bangla), *Bhorer Kagoj*, 14 January 2020. Available at <https://www.bhorerkagoj.com/print-edition/2020/01/14/289178.php> (accessed on 13 July 2020); “Suspected female jihadist arrested from house” (translated from Bangla), 13 January 2020. Available at <https://www.prothomalo.com/bangladesh/article/1634218> (accessed on 14 July 2020); “Three female terrorists arrested from Kushtia” (translated from Bangla), 1 July 2017, available at <https://www.bbc.com/bengali/news-40467758> (accessed on 14 July 2020).

¹⁸ Anand Kumar, “Bangladesh: Islamists Attack NGOs as Part of Jihad”, 21 March 2005. Available at www.saag.org/common/uploaded_files/paper1295.html.

In addition, terrorist groups intentionally target women, encroaching on their human rights and hindering their socioeconomic development, including by restricting their freedom of movement and access to education.¹⁹ Women are also targeted for acts of SGBV, such as rapes, forced marriages, and sexual slavery. As recognized by the United Nations Security Council, acts of SGBV “are known to be part of the strategic objectives and ideology of certain terrorist groups, used as a tactic of terrorism, and an instrument to increase their power through supporting financing, recruitment, and the destruction of communities”²⁰. In some countries, the infliction of this form of violence on women and girls is highly disproportionate: they may constitute up to 99 per cent of the victims of reported sexual violence.

In some contexts also, women are disproportionately affected by internal displacement as the result of violence caused by terrorist groups or that of conflict in general. For example, in Cox’s Bazar, women constitute the majority of those displaced as a result of the persecution by the Myanmar forces. Women in the Chittagong Hill Tracts (CHT) are yet another group of women disproportionately affected by conflict-related sexual violence.²¹ Women may also face difficulties accessing justice and seeking remedies for the violations and abuses they have suffered due to structural inequalities or discrimination inherent in the criminal justice system.

The *National Action Plan on Women, Peace and Security (2019-2022)*, launched by the Government of Bangladesh in November 2019, with support from UN Women, highlights the different ways in which women have been affected by terrorism, conflict, and displacement:

The influx of over one million Rohingya people from the Northern Rakhine State of Myanmar over the border to the coastal area of Cox’s Bazar has challenged Bangladesh’s humanitarian disaster management and response mechanisms. [More than half of these people are women who, according to credible reports of the United Nations and other human rights organizations, faced the worst forms of sexual violence in Myanmar.] Through the generosity of the Government of Bangladesh, the Rohingya population has found safety and shelter in camps along the border. However, a multitude of challenges remain for Bangladesh to continue supporting those living in the camps, including providing for their basic needs as well as addressing past traumas, including sexual and gender-based violence. As women and girls account for 52 per cent of the population in the camps, and one in six families is headed by a single mother, a gender-sensitive approach is crucial as the Government of Bangladesh looks to the next steps in their assistance to the Rohingya until they return to their home country in safety, security and dignity.

In addition, within the country there is significant internal displacement as well as cross-border migration caused by the impacts of climate change, such as severe cyclones, floods, riverbank erosion, and changes in farmland viability. Men often move to towns and cities in search of livelihoods, which leaves women burdened

¹⁹ Naureen Chowdhury Fink, Sara Zeiger & Rafia Bhulai, eds., *A Men’s World? Exploring the Roles of Women in Countering Terrorism and Violent Extremism*, (Hedayah, 2016), p.7.

²⁰ Security Council resolution 2242 (2015), S/RES/2242 (2015), preamble.

²¹ Kapaeeng Foundation, *Human Rights Report 2015 on Indigenous Peoples in Bangladesh* (Dhaka: Kapaeeng Foundation, 2016), 126, (reported cases of violence against women include rape, gang rape, rape followed by murder, physical assault, attempted rape, abduction, sexual harassment, and trafficking). Available at <http://dtp.unsw.edu.au/sites/default/files/John%20Tripura.pdf> (accessed on 18 July 2020); Bina D’Costa, “Marginalisation and Impunity: Violence against women and girls in the Chittagong Hill Tracts”, (Dhaka: International Work Group for Indigenous Affairs, 2014), p. 37–8. Available at http://www.iwgia.org/publications/search-pubs?publication_id=679 (accessed on 18 July 2020).

with the responsibility of carrying out both productive and reproductive roles in the household. This destabilizes communities and creates insecurities for women. As environmental changes continue to worsen, this phenomenon will become more severe and needs to be addressed.

In recent years women have been impacted by an increasing trend of violent extremism. Women are often the primary victims of the denial of human rights by violent extremist groups. Some, although very few, women are also perpetrators, playing a role in recruiting men and other women, in fundraising, and in executing violent acts (emphasis added).

The significant impacts on women's and girls' rights, including the use of SGBV as a tactic of terrorism, calls for a robust and gender-sensitive criminal justice response that takes into account women's specific needs and interests and supports their access to justice.

Women as perpetrators

While women are particularly affected by the crimes of terrorist groups, it is important to avoid the misperception that women can only be victims of terrorist violence, based on gender stereotypes which generalize and suggest that women and girls become associated with terrorist groups only involuntarily or as the result of coercion.²²

There are different scholarly and theoretical premises that explain female criminality in general from a criminology perspective. For example, some scholars hold that more empowered women tend to be involved in more violent crimes;²³ others, on the other hand, maintain that it is the marginality by way of victimization of women that can explain women's involvement in crimes.²⁴ In absence of sufficient empirical data and overarching quantitative studies regarding female terrorism in Bangladesh, it cannot be said for sure whether it is the more empowered women or the more marginalized ones who are more prone to get involved in terrorism and violent extremism leading to terrorism. The available information and data suggest that the women involved in terrorism came from different backgrounds, and a notable pattern or unifying characteristic cannot be observed.

²² GCTF, Good Practices on Women and Countering Violent Extremism, Good Practice 8.

²³ See, Freda Adler and Herbert M. Adler, (1975) *Sisters in Crime: The rise of the new female criminal*, (New York, United States of America, McGRAW Hill, 1975).

²⁴ See, Meda Chesney-Lind, "Women and Crime: The female offender", in *Sign*, Vol 12. No. 1 (Autumn).

Al-Qaida (Indian subcontinent) and ISIL are the two groups that started the era of Islamist militancy in Bangladesh.²⁵ Back in the 1970s, women from Bangladesh went to the Middle Eastern countries and took part in terrorist activities (albeit, mostly unwillingly and not of own volition, as per reports).²⁶ The trend of apparently willingly choosing to join the terrorist organizations is a relatively new one. It was only in 2009 when trained women participants from leading terrorist organizations started to be increasingly visible.²⁷

There are several reasons why women may choose to support the terrorist organizations. Apart from women who are coerced into getting involved in the militant activities, there are women who work in pursuance of own motives or drives. There is no one reason that can be considered as a motivation for women's involvement in terrorism. The motives are many and include supporting the perceived cause of Islam, showing obedience to militant husbands or relatives, dealing with inequalities, and looking at terrorism as a means for finding a purpose as well as solace.²⁸ In this backdrop, women perform an array of roles in the terrorist organizations – ranging from operational or tactical roles to conducting armed attacks to those of suicide bombers.

In some cases, women have shown to be motivated by husbands, friends or relatives; there are also cases in which women were self-motivated and in turn inspired their husbands to get involved in the terrorist acts.²⁹ As per the existing literature and the law enforcing agencies sources, in the Bangladesh context, a number of women are radicalized, recruited and often forced to join the militant groups.³⁰ 'Interrogation of some of the female terrorist detainees showed that they accompanied their husbands as they were worried about how the society would treat them if their husbands' involvement in militant activities came to light.'³¹

Integrating a gender perspective is necessary in order to accurately assess the criminality of these various women whose motivations are inherently complex in nature and intricately multifaceted; to make decisions on charging, prosecution or alternatives to prosecution that will advance justice and accountability; and to support the criminal justice system to play its part in the overall effort to prevent and counter terrorism and violent extremism leading to terrorism.³²

²⁵ Ali Riaz, "Who are the Bangladeshi 'Islamist Militants'?" in *Perspectives on Terrorism*, 10(1), 1, 2016. Available at <http://www.terrorismanalysts.com/pt/index.php/pot/article/view/485> (accessed on 18 July 2020).

²⁶ Sohrab Hasan, "Female terrorist this time!" (translated from Bangla), *Prothom Alo*, 12 September 2016. Available at <https://www.prothomalo.com/opinion/article/975166> (accessed on 13 July 2020).

²⁷ Julfikar Ali Malik, "Trained female JMB militants appear on scene for first time", *The Daily Star*, 21 February 2009. Available at <https://www.thedailystar.net/news-detail-76813> (accessed on 13 July 2020); "21 women militants held in Bangladesh", *Indian Express*, 23 April 2009. Available at <http://archive.indianexpress.com/news/21-women-militants-held-in-bangladesh-report/450414/> (accessed on 14 July 2020).

²⁸ Shafi Md Mostofa, "Key Drivers of Female Radicalisation in Bangladesh", in *Counter Terrorist Trends and Analyses*, Vol. 12, No. 4 (June 2020), pp. 27-31.

²⁹ Sheikh Sabiha Alam, "Women as vulnerable to terrorism".

³⁰ Saimum Parvez, "Bangladesh and India", in *Counterterrorism Yearbook 2019*, Isaac Kfir, Georgia Grice, eds., p. 43.

³¹ Abdul Basit, Sara Mahmood, Iftexharul Bashar and Mohammed Sinan Siyech, "South Asia: Afghanistan, Pakistan, Bangladesh, India", in *Counter Terrorist Trends and Analyses*, Vol. 10, No. 1, January 2018, p. 46.

³² Naureen Chowdhury Fink, Sara Zeiger & Rafia Bhulai, *A Men's World? introduction*; UNODC, *Gender Mainstreaming in the work of UNODC*, 2013, p. 63; OSCE, *Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism: A Community-Policing Approach*, p. 39.



Case study

Woman radicalized by husband

Abedat-ul-Fatema, wife of neo-Jamaat-ul-Mujahideen Bangladesh (neo JMB) leader Tanveer Kaderi, graduated from a renowned university and worked for a reputable organization. She was radicalized by her husband, joining the radicalized extremist group after her husband threatened to leave her should she not accompany him in *hijrat*. She claimed being motivated by fear of being left alone. Another driving force was that her husband assured her that she would become a teacher at a school if she accompanied him. She thus joined her husband and followed him in the path of Jihad. Hence both fear and hopes for a better life were driving factors for her to join the radical extremist outfit.



Case study

Woman being self-motivated

Momena Soma, a lone wolf terrorist, became self-radicalized through online extremist propaganda of ISIL and Al-Qaida. She travelled to Australia with a student visa and within one week of her arrival there, stabbed her Australian accommodation provider. She claimed she was harbouring an intention to kill once she goes abroad. She also directed her sister in Bangladesh to attack the police when they paid a visit to her house in order to collect information.

The intersection of gender and terrorism amid the global pandemic

A recent paper³³ prepared by the Counter-Terrorism Committee Executive Directorate (CTED) in accordance with Security Council Resolution 2395 (2017) has laid down certain potential short-term and long-term opportunities that are likely to be exploited by the terrorist organizations.

The potential short-term opportunities (some of which have already been exploited across the globe by different militant outfits) include:

- A captive audience created as a by-product of the unsupervised increased use of the Internet.
- Integration of COVID-19 into the terrorist narratives and propaganda and furthering the same.
- Fusing the terrorist narratives with the existing or new conspiracy theories and using the same as radicalization multiplier.
- Exploiting the racist, anti-Semitic, Islamophobic and anti-immigrant hate speeches and the divisions created among different groups amid the pandemic.

³³ UNSC Counter-Terrorism Committee Executive Directorate, *The impact of the COVID-19 pandemic on terrorism, counter-terrorism and countering violent extremism*, June 2020. Available at <https://www.un.org/sc/ctc/wp-content/uploads/2020/06/CTED-Paper-The-impact-of-the-COVID-19-pandemic-on-counter-terrorism-and-countering-violent-extremism.pdf> (accessed on 14 July 2020).

- Playing role of an alternative service provider for people who belong to the lower strata of the society and radicalizing them.

Potential long-term impacts of COVID-19 may include:

- Pressure on States' counter-terrorism resources.
- Reduced capacity of non-State counter-terrorism actors.
- Increase in underlying grievances and drivers.

These short-term and long-term opportunities underscored by the CTED from a general global perspective are equally relevant for Bangladesh, and there is ample scope for the terrorist organizations to exploit these vulnerabilities as well as their gendered aspects in Bangladesh, especially since newspapers suggest that ISIL is planning on announcing its new wing in Bangladesh, namely the 'Bengal Ulayat'.³⁴

Bangladesh has been particularly successful at an operational level in foiling terrorist attacks; however, with the ever-increasing online radicalization and new strategies adopted by terrorist groups for terrorist recruitment and propaganda, continuous and concerted counter-efforts are required. The state apparatus is currently focusing on containing the spread of the coronavirus and amid the pandemic, the pre-existing inequalities and discriminatory practices across different spheres of the society are becoming increasingly visible. These practices have the potential of conveniently being manipulated by the terrorists to get infused with extremist propaganda. The terrorist organizations can also take advantage of people who are at present dealing with financial hardships by radicalizing and recruiting them. Across every sphere, from health to the economy, security to social protection, the impacts of COVID-19 are exacerbated for women and girls simply by virtue of their sex.

The pandemic is deepening pre-existing inequalities, exposing vulnerabilities, and thereby amplifying its impacts on the marginalized populations and the minorities, as well as on women. Therefore, since the onset of the pandemic, women are at risk of being impacted by terrorist activities as well: both as targets and as easy prey for radicalization. For example, in the context of Bangladesh, educational institutions have been closed down since March 2020, with only limited online study possibilities. The high number of youth, including women and girls, without access to learning opportunities or gainful employment and spending more time in online spaces, have the potential to succumb to radicalization. The fairly high Internet penetration in the country, coupled with often low digital literacy and rising frustrations, poses an increased risk of radicalization for both male and female students. Online recruitment is not new for Bangladesh; already prior to the pandemic, police officers, lawyers and others who have interacted with jihadists contended that large numbers of militants are drawn to jihadist ideas online prior to physically joining violent groups,³⁵ since 'spreading propaganda through the Internet was considered safer [considering its] lower possibility of being tracked by law enforcement agencies.'³⁶ According to reports, the terrorist groups had uploaded Bangla versions

³⁴ "Fear of terrorist attack", *Prothom Alo* 27 July 2020. Available at <https://www.prothomalo.com/bangladesh/article/1671364> (accessed on 13 July 2020).

³⁵ International Crisis Group, "Countering Jihadist Militancy in Bangladesh", Asia Report No. 295, 2018. Available at <https://d2071andvip0wj.cloudfront.net/295-countering-jihadist-militancy-in-bangladesh.pdf> (accessed on 14 July 2020).

³⁶ Mohammad Istiaque Rashid, "Online Radicalization: Bangladesh Perspective", Master's Thesis, US Army Command and General Staff College, Fort Leavenworth, Kansas, 2017. Available at <https://www.hsdl.org/?view&did=802928> (accessed on 14 July 2020).

of ISIL's *Dabiq* magazine and al-Qaida's *Inspire* online. Videos reportedly uploaded by terrorist groups included specific references to potential targets in Bangladesh.³⁷

Amid the ongoing COVID-19 crisis, the law enforcing agencies are reporting that the terrorists have quickly adapted to the circumstances and are using new rhetoric to mobilize new members online; in view of enhanced monitoring of online contents by law enforcement agencies, terrorists are increasingly making use of encrypted apps.³⁸ The largely unsupervised usage of the Internet by youth, including women, can indeed be an opportunity for the terrorist groups to widen their base and exploit the vulnerabilities and frustrations, including in Bangladesh.

³⁷ Counter Extremism Project, "Bangladesh: Extremism and Counter-Extremism", 2017. Available at https://www.counterextremism.com/sites/default/files/country_pdf/BD-12212017.pdf (accessed on 14 July 2020).

³⁸ "Terrorists are not sitting idle amid the pandemic: members are being recruited online", Prothom Alo, 1 July 2020. Available at <https://www.prothomalo.com/bangladesh/article/> (accessed on 14 July 2020).





Development of the National Action Plan on Women,
Peace and Security, Dhaka
@ UN Women, 2019

1

MAINSTREAMING GENDER INTO COUNTER-TERRORISM, PREVENTING VIOLENT EXTREMISM, AND CRIMINAL JUSTICE RESPONSES TO TERRORISM



Learning objectives

By the end of this Chapter, you will be able to:

- Explain the concept of gender mainstreaming and name related Bangladeshi policy documents
- Discuss the need to apply a gender mainstreaming approach in efforts to counter terrorism, prevent violent extremism, and in criminal justice responses to terrorism, in line with international and Bangladeshi policy instruments
- Discuss the relevance of gender mainstreaming to human rights, gender equality, non-discrimination, and protection from sexual and gender-based violence
- Explain the linkages between the Women, Peace and Security agenda and mainstreaming gender into counter-terrorism

1.1 The gender mainstreaming approach



Reference

Key terms, such as ‘gender’, ‘sex’, and ‘sexual and gender-based violence’ are explained in the Glossary to this Module.

Gender mainstreaming defined

Gender mainstreaming is one of the key strategies for promoting gender equality and women’s rights and eliminating all forms of discrimination against women on the basis of sex and gender. Gender mainstreaming promotes the human rights of women and the elimination of discrimination against women. It also contributes to ensuring that measures to prevent and counter violent extremism and terrorism are better informed and targeted, ultimately making those measures more effective.



Focus: Gender mainstreaming

Mainstreaming a gender perspective is the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a way to make women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally, and inequality is not perpetuated. The ultimate goal is to achieve gender equality.³⁹

As reflected in the definition above, integration of a gender perspective into policies, practices and programmes involves examining the needs and experiences of both women and men. A gender-neutral approach (which does not differentiate between the impact of terrorism and counter-terrorism measures on women and men and assumes that they share the same experiences, needs and concerns) can be problematic because it may in fact reflect the assumption that only men's experiences of terrorism and counter-terrorism are relevant. This is due to the fact that since men typically dominate decision-making at the household and community levels, a gender-neutral approach may reflect largely male priorities.

National and international responses to terrorism should consider and be shaped not only by men's, but also by women's experiences as perpetrators of acts of terrorism, as victims of terrorism, and as agents in State and non-State institutions (such as social movements) involved in countering terrorism.⁴⁰

In the context of counter-terrorism there has conventionally been a tendency to equate the term 'gender' with the category of 'women', and there has been little engagement with the category of 'men'. Considering the role of masculinities and male identity in terrorism can be critical in understanding motivations for engaging in violent extremism or terrorism, and how masculinities are employed in recruitment tactics. A leading scholar has observed that:

“... men who cannot meet traditional expectations of masculinity – such as breadwinner, respect and honor, wealth, access to sexual partners of choice – may precisely find that radical or extremist political mobilization offers a compelling substitute for regular masculinity authentication. It is, therefore, not accidental that terrorist/violent extremist groups manipulate gender stereotypes to recruit men and women, ISIS notably employs hypermasculine images to portray its fighters, as well as promised access to sexual gratification, marriage and guaranteed income as a reward for the glory of fighting. These motifs have proven indisputably alluring to marginalized men whose capacity to access any similar social capital or status in their own communities will be extremely limited.”⁴¹

³⁹ UNODC, Gender Equality Strategy for the United Nations Office on Drugs and Crime and the United Nations Office in Vienna (2018-2021).

⁴⁰ Jayne Huckerby, “Gender, counter-terrorism and international law” in *Research Handbook on International Law and Terrorism*, Ben Saul, ed. (Cheltenham, United Kingdom, Edward Elgar Publishing Limited, 2014), p. 165.

⁴¹ Fionnuala Ní Aoláin, “The complexity and challenges of addressing conditions conducive to terrorism”, in *Using Human Rights to Counter Terrorism*, Manfred Nowak and Anne Charbord, eds. (Cheltenham, United Kingdom, Edward Elgar Publishing Limited, 2018), p. 190.



Activity 1

Consider the statement, presented above, that:

“considering the role of masculinities and male identity in terrorism can be critical in understanding motivations for engaging in violent extremism or terrorism, and how masculinities are employed in recruitment tactics.”

- (i) What does the term ‘masculinities’ mean?
- (ii) Thinking specifically of Bangladesh, what role do masculinities play in the recruitment of men?

While recognizing the importance of analysing the role of masculinities, this Module predominantly examines how women experience and are impacted by the justice system’s response to terrorism. This is to balance the gender-neutral approach, which is premised on the assumption that terrorists, victims of terrorism, and counter-terrorism agents are primarily and/or exclusively male.

Gender mainstreaming in the Bangladeshi policy context

Bangladesh is currently implementing the gender strategy of its Seventh Five-Year Plan (2016-2020), which aims at establishing “a country where men and women will have equal opportunities and rights and women will be recognized as equal contributors in economic, social and political development.”⁴² The framework for women’s empowerment and gender equality comprises four areas of strategic objectives:

- Improve women’s human capabilities, by providing access to health care, life expectancy, nutrition, reproductive health, education, information and training;
- Increase women’s economic benefits, by ensuring women have access to or control over productive assets, resources, services, skills, property, employment, income, information, technology, financial services, and other economic opportunities;
- Enhance women’s voice and agency in private and public spheres (including politics);
- Create an enabling environment for women’s advancement in the sociopolitical and legal environment.

To implement these strategic objectives, seven actions have been identified that will contribute in achieving results in these four areas:

1. Increase access to human development opportunities
2. Enhance access to and control over productive resources
3. Increase participation and decision making
4. Establish conducive legal and regulatory environment
5. Improve institutional capacity, accountability and oversight
6. Increase protection and resilience from crisis and shocks
7. Promote positive social norms

⁴² General Economics Division (GED), Bangladesh Planning Commission, Seventh Five-Year Plan FY2016-FY2020, p. 654.

Another fundamental policy that addresses the gender issues in Bangladesh is Vision 2021, a perspective plan of the Government of Bangladesh that aims to transform the country from a low-income economy to the first stages of a middle-income nation by year 2021. In order to substantially reduce gender injustice by 2021, Bangladesh committed to introducing major changes in national policies, allocative priorities and institutional arrangements relating to the role of women in the society.⁴³ Among others, Vision 2021 aims at achieving the following results:

- Institutionalization of gender responsive planning and budgeting.
- All laws relating to “gender inequality will be reviewed to ensure gender sensitive good governance, with due respect for personal laws and community specific customs”.
- Establishing a caring society to enhance “a system of gender sensitization”.

Furthermore, the National Women Development Policy 2011⁴⁴ is in place. The Policy envisages laying down of gender-responsive policies and laws to ensure increased participation of women in all spheres. Some of the objectives of the National Women Development Policy 2011 are as follows:

- To establish equal rights of men and women in areas of state and public life in the light of the constitution of Bangladesh.
- To ensure security and safety of women in all areas of state, social and family life.
- To ensure women’s socioeconomic, political, administrative and legal empowerment;
- To ensure full and equal participation of women in the mainstream socioeconomic development.
- To bring up women as educated and skilled human resources.
- To remove existing male-female disparities.
- To give appropriate recognition to women’s contribution in socioeconomic areas.
- To establish gender equality in politics, administration, other areas of activity, socioeconomic activity, education, culture, sports and in all areas of family life.
- To innovate and import technology favoring the interest of women and prohibit anti-women technologies.
- To ensure taking appropriate steps to ensure sound health and nutrition of the women.
- To arrange rehabilitation of the women affected in natural calamities and armed conflicts.
- To revise and amend existing law and make necessary legislation to ensure the human rights of women.
- To abolish all discriminatory laws and ensure participation of women legal experts in the commission or committee formed with the objective of making legislation and reforms.
- To refrain from giving any statement or doing similar something or taking any initiative based on wrong interpretation of any religion, any tenets against the interest of women at the local or state levels.
- To not allow growth of any discriminatory social custom.
- To give lessons on legislation concerning human rights and women and increasing sensitization.

⁴³ General Economics Division (GED), Bangladesh Planning Commission, Perspective Plan of Bangladesh 2010-2021, April 2012.

⁴⁴ Ministry of Women and Child Affairs, National Women Development Policy 2011, March 2011.

1.2 Mainstreaming gender into counter-terrorism and prevention of violent extremism

Recognition of the need to mainstream gender perspectives in measures to counter terrorism and prevent violent extremism is a relatively recent phenomenon. Such considerations include:

- The roles of women and girls involved in terrorist activities
- The roles of women and women's organisations in preventing violent extremism
- Considering how the needs of male and female victims of terrorism differ
- How masculine gender constructs affect radicalization and the commission of terrorist acts against women
- How women and girls may be particularly affected by the counter-terrorism response.

In the Bangladesh context, the central role of women and girls as actors in the prevention and countering of violent extremism is recognized in the National Action Plan on Women, Peace and Security (2019-2022):

Many [women] are [...] on the frontlines of prevention efforts, influencing community and family values, identifying early signs of radicalization, and using different forms of media to promote counter-narratives. Therefore, promoting women's effective participation and leadership at the community, national and international levels to prevent violent extremism is an emerging priority.

The Action Plan espouses three pillars to underpin the roles of national bodies working with security, foreign policy, development and gender equality relevant to the needs of women in conflict prevention, conflict and post-conflict situations.

Pillar 1, on 'Prevention', calls attention to active and diverse roles that women play in PVE and intercommunal, inter-ethnic and racial tensions and notes that the positioning of women in society provides opportunities to influence community and family values, create counternarratives that speak to an audience from a female perspective, and identify and intervene at early signs of radicalization that lead to extremist violence. Further, strategies to prevent violent extremism must also acknowledge the fact that women in Bangladesh are increasingly being recruited into playing an active role in extremist activities.

The overall objective under this pillar is to engage more communities and institutions in initiatives to promote social cohesion and prevent conflict, violent extremism, and gender discrimination. The expected results and relevant activities under this pillar are as follows:

- Key government institutions have increased their awareness and knowledge of the root causes of conflict and violent extremism and how to address them, including an understanding of the role women play in preventing conflict and violent extremism.
- Key government institutions have evidence on gender-sensitive policies and model initiatives that are effective in promoting social cohesion, tolerance and diversity including gender equality, and that can be scaled up.
- Dialogue platforms and networks of women leaders and civil society actors have been established to strengthen social cohesion, social harmony and the prevention of conflict and violent extremism.

Secondly, the 'Participation' pillar refers to the inclusion of women and women's perspectives in decision-making processes related to the prevention, management and resolution of conflict.

This pillar is, therefore, intended not only to put women into key positions in existing administrative and management structures that deal with managing conflict, security and maintaining stability, but also to set up a woman's agenda in related government structures and mechanisms.

The overall objective under this pillar is to increase women's meaningful participation in maintaining peace and security, including peacebuilding and conflict resolution processes, peacekeeping missions, disaster management and response, humanitarian assistance, and the prevention of violent extremism. The expected results and relevant activities under this pillar are as follows:

- Women and men have increased awareness on the importance of women's participation in decision-making related to peace and Security issues.
- Laws, policies and guidelines are in place to enable women's increased participation in decision-making positions related to peace and security issues.
- Women's capacity for leadership is enhanced regarding peace and security issues at the community, subnational and national levels.

The 'Protection, Relief and Recovery' pillar refers to ensuring the safety, physical and mental well-being, security and respect for human rights for women and girls as well as addressing their specific needs during and after conflict, emergency and disaster situations.

The overall objective under this pillar is to protect women's safety and well-being and to ensure that their needs, priorities and rights are addressed in the emergency situations of natural disasters and humanitarian crises. The expected results and relevant activities under the third pillar are as follows:

- The capacity of the security sector, law enforcement agencies (police, military, first responders, medical staff etc.) and local government is enhanced to be more genderresponsive during disasters, emergencies and humanitarian crises, including the capacity to address gender-based violence.
- UN peacekeeping troops deployed have a strengthened capacity to protect women and men from sexual exploitation and abuse during deployment.
- The knowledge of government and civil society stakeholders, including first responders in disaster and emergency situations, is enhanced to protect women's safety and wellbeing in peace and security settings.

Another policy document that has a pertinent bearing on the issue of gender mainstreaming in conflict responses is the National Women Development Policy 2011. The Policy document envisages creation of awareness against increased victimization and affectation of women in armed conflict and ensuring increased participation of women in bringing an end to conflict and to establishing peace.

On the global level, the 2014 UN Global Counter-Terrorism Strategy Review encouraged Member States, UN entities and international and regional organizations "to consider the participation of women in efforts to prevent and counter terrorism"⁴⁵. The most recent Global Counter-Terrorism Strategy Review resolution of June 2018 urges Member States to adopt a gender-sensitive analysis of the drivers of radicalization for women, and the impacts of counter-terrorism strategies on women's human rights and women's organizations.

⁴⁵ A/RES/68/276.

The UN Global Counter-Terrorism Strategy will be reviewed again in June 2021 for the seventh time. The review has been postponed due to onset of the COVID-19 pandemic.

The importance of mainstreaming gender perspectives in strategies to counter terrorism and violent extremism is also evident in the Secretary-General's Plan of Action to Prevent Violent Extremism. This document calls on Member States to:

- (a) Mainstream gender perspectives across efforts to prevent violent extremism;
- (b) Invest in gender-sensitive research and data collection on women's roles in violent extremism, including on identifying the drivers that lead women to join violent extremist groups;
- (c) Include women and other underrepresented groups in national law enforcement and security agencies, including as part of counter-terrorism prevention and response frameworks;
- (d) Build the capacity of women and their civil society groups to engage in prevention and response efforts related to violent extremism;
- (e) Ensure that a portion of all funds dedicated to addressing violent extremism are committed to projects that address women's specific needs or empower women...⁴⁶

The Security Council has recognized the need to address the role of women in preventing and countering terrorism, and to ensure their protection on many occasions. In its resolution 2178 (2014), the Security Council recognized the need to empower women as a mitigating factor to the spread of violent extremism and radicalization.



Activity 2

In resolution 2178 (2014), which focused on the threat posed by foreign terrorist fighters, the Security Council recognized the need to empower women as a mitigating factor to the spread of violent extremism and radicalization.

- (i) Do you agree that women's empowerment mitigates the spread of violent extremism?
- (ii) If yes, in what ways does women's empowerment mitigate the spread of violent extremism?

This recognition is also part of a global policy framework known as the Women, Peace and Security Agenda, which is aimed at promoting gender equality and enhancing the rights, participation, and protection of women in conflict and post-conflict contexts, including with respect to conflict-related sexual and gender-based violence. The first Security Council resolution on women, peace and security was resolution 1325 (2000) which, in addition to resolutions 1889 (2009) and 2122 (2013), addresses broad themes such as the specific experience of women in conflict and their role in peacebuilding, peacekeeping and conflict resolution. Six subsequent resolutions also cover these issues but focus more on conflict-related sexual violence.⁴⁷

⁴⁶ A/70/674, para. 53.

⁴⁷ Those resolutions are resolutions 1820 (2009), 1888 (2009), 1960 (2010), 2106 (2013), 2242 (2015) and 2467

The nexus between the Women, Peace and Security agenda and countering terrorism has been addressed in a number of Security Council resolutions, including resolution 2242 (2015), in which the Council recognized the differential impact of terrorism and violent extremism on the human rights of women and girls., In resolutions 2331 (2016) and 2388 (2017), the Council recognized the connection between trafficking in persons, sexual violence, and armed conflict and terrorism.

UN Member States should develop national action plans for the implementation of resolution 1325 (2000) in order to localize international commitments under the Women, Peace and Security resolutions.⁴⁸ Where relevant, national actions plans should include means for integrating the Women, Peace and Security Agenda into national counter-terrorism measures.



Focus: National Action Plan for Bangladesh for the Implementation of Security Council Resolution 1325

In November 2019, the Government of Bangladesh published the National Action Plan on Women, Peace and Security (NAP WPS). The plan provides a national policy framework for the realization of UN Security Council resolution 1325 and other resolutions related to the ‘Women, Peace and Security’ agenda. The resolution was adopted under the initiative of Bangladesh, as a non-permanent member of the Security Council at that time.

It prescribes the roles of national bodies working with security, foreign policy, development and gender equality relevant to the needs of women before, during and after conflict according to the following three pillars:

1. Prevention: addresses the prevention of conflict and violence, including sexual and gender-based violence, by incorporating women’s perspectives into efforts to increase social and communal cohesion, and recognizing that the normalization of any form of violence has the potential to lead to escalation.
2. Participation: refers to the inclusion of women and women’s perspectives in decision-making processes related to the prevention, management and resolution of conflict. This pillar is, therefore, intended not only to put women into key positions in existing administrative and management structures that deal with managing conflict, security and maintaining stability, but also to set up a women’s agenda in related government structures and mechanisms.
3. Protection, relief and recovery: refers to ensuring the safety, physical and mental well-being, security and respect for human rights for women and girls as well as addressing their specific needs during and after conflict, emergency and disaster situations.

(2019).

⁴⁸ Security Council, Presidential statements of 28 October 2004 (S/PRST/2004/40) and 27 October 2005 (S/PRST/2005/52).



Focus: Gender mainstreaming in Good Practices on Women and Countering Violent Extremism of the Global Counterterrorism Forum

The Global Counterterrorism Forum (GCTF) has developed a guidance document entitled *Good Practices on Women and Countering Violent Extremism*, which contains good practices and focuses on women and gender aspects in the context of efforts to counter violent extremism. The GCTF acknowledges the failure of past efforts aimed at countering violent extremism to mainstream gender, despite the participation of women and girls in violent extremism and terrorism, as well as their roles in prevention.

Good Practice 1 establishes the need to include women and girls and gender mainstreaming in the design, implementation, monitoring and evaluation of all policies, laws, procedures, programmes and practices related to countering violent extremism.

According to the GCTF, mainstreaming gender in countering violent extremism is based on the understanding that:

- Gender mainstreaming improves the design and implementation of efforts to counter violent extremism and ensures that such efforts account for the different ways that women and girls are involved in violent extremism.
- A comprehensive approach to countering violent extremism should integrate considerations of how violent extremism and counter-terrorism efforts impact women and girls differently than they impact men and boys.
- Efforts to counter violent extremism should take into account the way in which societal gender norms and expectations associated with belonging to a particular gender, shape people's lives in order to deliver more targeted interventions.

The document also underscores that the practical integration of women and girls into all aspects of programming related to countering violent extremism can only occur in the context of broader guarantees of the human rights of women and girls. In particular, such guarantees should include addressing the causes of gender inequality, such as the subordination of women and discrimination on the basis of sex, gender, age and other factors.



Activity 3

In your view, what does it mean to consider the gender dimensions of counter-terrorism and the prevention of violent extremism in Bangladesh? Why is it important to do so?

1.3 Mainstreaming gender into criminal justice responses to terrorism

In addition, it is also important to apply a gender mainstreaming approach to the way that the criminal justice system deals with terrorist crime, its perpetrators and victims.

As underscored in UNODC's guidance note on *Gender mainstreaming in the work of UNODC*, "gender mainstreaming is vital to ensuring long-term sustainable criminal justice reform, as it identifies and uses opportunities for improving gender equality in projects and policies that would not have otherwise been considered gender issues".⁴⁹ It is also essential in order to avoid worsening inequalities in criminal justice systems.

Unequal gender power relations and gender stereotypes stemming from biological, sociocultural and economic differences that assign status and value to the sexes often filter their way into public institutions. Thus, while criminal justice mechanisms are charged with dispensing justice and ensuring accountability through equal protection and application of the law, women and men victims undergo different experiences in these institutions.⁵⁰ As a starting point, criminal justice systems have generally been developed by men and based on their experiences. As a result, they often reflect implicit gender stereotypes about how women and men come into contact with the law. Consequently, personnel in criminal justice systems may consciously or unconsciously reinforce the pervasive unequal power relations and stereotypes that characterize wider societal patterns of gender relations, ranging from initial contact with law enforcement, to investigation, pretrial, trial and post-trial, as well as during imprisonment or deprivation of liberty, as demonstrated in the examples below.



Focus: Gender impacts of criminal justice responses

Assumptions made about the nature of victims and offenders

Gender stereotypes influence thinking that men are perpetrators of violence and women are passive victims. In some instances, rates of victimization are indeed proven to be linked to gender: women are more likely to be victims of gender-based violence, for example, which is inextricably linked to gender-based inequality. However, this assumption is not universally accurate and often leads to misconceptions and vulnerabilities. Female criminal behaviour has commonly been perceived as less prevalent, or a less serious problem, than male criminal behaviour.⁵¹ Terrorist and violent extremist groups exploit these stereotypes for strategic advantage.

Criminalisation of offences.

Criminal law provisions can overtly treat men and women differently or have differential impacts due to structural gender inequalities, while being on their face neutral. As an example of the provisions overtly treating men and women differently, consider the criminalization of rape under Section 375 (1) of the Penal Code 1860, which is limited to men as perpetrators and women as victims. As an example of the criminal law provisions having differential impacts due to structural gender inequalities, consider the criminalization of abortion under the Penal Code 1860: experience shows that while such criminalization may in principle apply equally to men and women (causing abortion), women are more likely to be disproportionately impacted, for reasons linked to culture, tradition and religion, and because they can become pregnant as a result of coerced sexual intercourse and/or rape.

⁴⁹ UNODC, *Gender Mainstreaming in the work of UNODC*, 2013, 7-8.

⁵⁰ UNODC, *Gender Mainstreaming in the work of UNODC*, 2013.

⁵¹ *Ibid.*, 70.

Administration of criminal justice.

Harmful gender stereotypes may, overtly or subtly, influence the work of criminal justice personnel, including police, lawyers, and judges. Such bias may manifest itself in sexual violence cases influenced by, for example, beliefs about victim behaviour, or attitudes towards marital violence.⁵² At the same time, the absence of female law enforcement personnel can discourage female victims from seeking assistance with their case.

Women may also face barriers in accessing justice due to a number of issues that are not gender-specific, but nonetheless disproportionately affect women. These include a lack of information of their legal rights, illiteracy and lower socioeconomic and education status, a lack of autonomy over decision-making and economic resources, and a fear of stigma for seeking redress for certain crimes. Similarly, legal aid may not be available to women and men on an equal basis. For example, in many jurisdictions women may face barriers to accessing legal aid where eligibility for legal aid is means tested on the basis of total household income rather than individual income, but where women do not have access to household finances.⁵³

Imprisonment and other forms of deprivation of liberty.

Women have a range of particular needs in detention that may not be considered in prison systems that are designed primarily for male prisoners. These relate to health aspects and the care of small children. Women in detention facilities, for example, are more likely to be subject to sexual abuse than male offenders. Women may be disadvantaged in accessing alternatives to police custody or imprisonment by bail conditions requiring the women to report to the authority (owing to the structural inequalities emanating from household and caregiving responsibilities).

Even where the victims of terrorist acts are of the same sex, they are not a homogeneous group. Depending on the age, status, vulnerability among other factors, women and girls experience suffering and trauma differently. They all deserve equal protection and equality before the law (as discussed further below), which are principles that should inform the design of multi-layered interventions. A criminal justice system that places equal value on women and men is vital as part of transformative approaches to addressing societal gender inequalities.

Thus, there is an urgent need for the criminal justice system:

- to acknowledge that women and men are disparately impacted by terrorism and have different needs for recovering from the consequences of terrorist activities
- to recognize the gendered risk of women to become victims of terrorist acts.
- to strengthen women's access to justice, to guarantee their protection and provide them with support and access to remedies.
- to recognize the role of women as agents in terrorist activities and to prosecute the persons responsible, both women and men, in accordance with Bangladeshi law.
- to adopt a gender mainstreaming approach in countering terrorism recognizing that gender neutral responses of the criminal justice system could exacerbate gender inequalities.

⁵² UNODC, Handbook on effective prosecution responses to violence against women and girls (2014), pp. 29-37.

⁵³ See, for example, Committee on the Elimination of Discrimination against Women, general recommendation No. 33 (2015), para. 37(e).



Focus: Gender mainstreaming in the Bangladesh Police Force

In 2012, the Bangladesh Police Gender Policy was formulated within the framework of the Bangladesh Constitution, in line with the recent progress made to guarantee gender justice and respect for human rights, such as the National Women Development Policy of 2011.

As noted in the executive summary:

Gender mainstreaming is now seen as an integral part of police reform and a key to operational effectiveness and institutional credibility. For example, emphasis is placed on increasing the recruitment of female police officers to ensure an appropriate gender balance, and efforts to reduce human (women's) rights violations and strengthen collaboration with women's organizations to create an efficient, accountable and participatory police that has the capacity to respond to the specific needs of men, women, girls and boys.

The overall goal of the Policy is to:

- Institutionalize a gender mainstreaming framework as a core value of the Bangladesh Police
- Promote amendments to the Police Act/Regulations that reflect CEDAW principles and other global, regional, and national frameworks that support gender equality and women empowerment
- Reduce the current gender imbalance in the Bangladesh Police and make the Bangladesh Police an equal opportunity employer
- Build the technical capacity of the Bangladesh Police management to undertake gender analysis and planning and
- Strengthen the response to gender-based violence

The Bangladesh Police Gender Policy also aims to promote the use of sex-disaggregated data and gender statistics within all Bangladesh Police institutions, and establish accountability procedures for the implementation of the Gender Policy, i.e. coordination, networking and monitoring.



Activity 4

Identify three ways in which the experiences of men and women within the criminal justice system differ.

Consider, for instance, the possibility of differences between men and women in Bangladesh regarding:

- Reporting to the police a crime they are victims of
- Being heard as witnesses when they are victims of a crime
- Obtaining bail when charged with a serious offence
- Access to assistance by a lawyer of their own choice

1.4 Gender equality as a human rights obligation

The right to equality and non-discrimination, including on the basis of sex and gender, is one of the foundational principles of human rights law, and is essential for the effective protection of human rights and the rule of law. Women and men are entitled to equality and nondiscrimination in the application of all human rights.

Bangladesh is party to numerous international and regional human rights instruments enshrining these rights, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which was adopted in 1979 and came into force in 1981, and its optional protocol. As a party to the Social Charter of the South Asian Association for Regional Cooperation (SAARC), 2004, Bangladesh is also committed to taking all the necessary measures “to educate public opinion and to direct national aspirations towards the eradication of prejudice and the abolition of customary and all other practices, which are based on discrimination against women” (Article 6).

As party to an array of international human rights treaties, Bangladesh has obligations and duties to respect, to protect and to fulfil human rights. The obligation to ‘respect’ requires Bangladesh to refrain from interfering with the enjoyment of human rights, while the obligation to ‘protect’ requires that Bangladesh protects individuals and groups from human rights abuses. The obligation to ‘fulfil’ is a positive obligation on Bangladesh to take steps to facilitate the enjoyment of basic human rights.

Bangladesh has a positive obligation under international law to protect all persons under its jurisdiction against human rights abuses perpetrated by both State and non-State actors.⁵⁴ This includes an obligation to prevent, investigate and punish human rights violations perpetrated by private persons or entities, including terrorist groups.

⁵⁴ Human Rights Committee, General Comment No. 31 (CCPR/C/21/Rev.1/Add.13), 26 May 2004, para. 8.



Reference

Module I of this training series on *Counter-terrorism and Human Rights: Incorporation of International Law into Bangladeshi Law* provides a general overview of the international and regional human rights framework and the human rights instruments to which Bangladesh is a party.

(a) The right to equality and non-discrimination

Article 19 of the Constitution of the People's Republic of Bangladesh provides that one of the State's fundamental principles of State policy shall be to endeavour to ensure equality of opportunity and participation of women in all spheres of national life. This, in light of the Bangladesh Constitution, shall be fundamental to the governance of Bangladesh, shall be applied by the State in the making of laws, shall be a guide to the interpretation of the Constitution and of other laws, and shall form the basis of work of the State and its citizens.⁵⁵ More directly, Article 28 (2) also ensures equal rights for women and men in all spheres of the State and of public life, which means that all rights mentioned in the Constitution (i.e. right to life, right to property, right to personal liberty, freedom of speech etc.) are equally applicable to women in Bangladesh. The prohibition of such discrimination is also a fundamental objective of policy frameworks, as previously seen with the Seventh Five-Year Plan and Vision 2021.

At the regional level, the right to equality and non-discrimination is also enshrined in Article VI of the SAARC Social Charter, 2004. Notably, in Article 6 (1) States Parties reaffirm their belief that:

“Discrimination against women is incompatible with human rights and dignity and with the welfare of the family and society; that it prevents women realizing their social and economic potential and their participation on equal terms with men, in the political, social, economic and cultural life of the country, and is a serious obstacle to the full development of their personality and in their contribution to the social and economic development of their countries”.

The recognition of women's and men's equality before the law requires the mainstreaming of gender perspectives into laws, protocols and procedures within criminal justice systems. Beyond the formal normative framework, the right to equality and equal protection for women under the law requires the adoption of gender-responsive approaches in the practices, attitudes, skills and gender composition of personnel.

From September 2008 to July 2019, the percentage of women in the police in Bangladesh more than tripled from 2.21% to 7.10%,⁵⁶ but is still low compared with the Least Developed Country average of 8.5%. Some initiatives include the Bangladesh Police Women's Network, created in 2008 with the following objectives, among others:

- To strengthen women's position in Bangladesh police.
- To improve professionalism through the affiliation with international network and exchanging derived knowledge and co-relating ideas.

⁵⁵ Article 8 of the Constitution of the People's Republic of Bangladesh.

⁵⁶ Bangladesh Police Women's Network website: <http://www.bpwn.org.bd/about.php>.

- To increase representation of women in Bangladesh police, their empowerment and participation in policy formulation processes.
- To increase participation of women police in different work areas in national and international milieu.
- To create an appropriate working environment for women in police force through implementation of welfare programmes covering the areas of education, health, social status and economic empowerment.

However, the Bangladesh Police Strategic Plan (2012-2014) reduced the emphasis on women in policing, and in the recent Bangladesh Police Strategic Plan (2018-2020), the recruitment and integration of women in the force is no longer flagged as a priority. The Bangladesh Police Strategic Plan (2018-2020) contemplated establishing separate help desks at all police stations (due by December 2018); deployment of female officers including at least one sub-inspector at various police stations (due by December 2020); and opening one-stop-service centres at Superintendent of Police and Police Commissioner's offices (due by December 2018), successful implementation of all these initiatives has been reported.



Focus: Asia Pacific Forum of National Human Rights Institutions Five Year Strategic Plan

The *Five Year Strategic Plan (2015-2020)* of the Asia Pacific Forum underscores the need to incorporate a focus on gender issues into all aspects of daily life. Women and girls in all countries across the Asia Pacific are at risk of serious violations of their human rights, such as gender-based violence and harassment. Entrenched roles, attitudes and stereotypes also mean that many experience poverty, discrimination and unequal access to services and participation in community life.

As a State Party to CEDAW, Bangladesh is required to take all appropriate measures to guarantee women the equal recognition, enjoyment and exercise of all human rights and fundamental freedoms on a basis of equality with men.⁵⁷ Further, Bangladesh is obligated to address not only discriminatory laws, but also practices and customs, and discrimination against women by private actors.



Focus: The Convention on the Elimination of All Forms of Discrimination against Women and the Committee on the Elimination of Discrimination against Women

At the international level, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is one of the core international human rights treaties, and legally binds all States Parties to fulfil, protect and respect women's human rights. It is focused on the human rights of women to equality and non-discrimination.

Bangladesh ratified the CEDAW in 1984, *albeit* with certain Sharia-based reservations claiming that the provisions it was putting reservations on ran counter to Quran and Sunnah. Initially, Bangladesh put reservations on Article 2 (stated below), Article 13(a) (relating to the right to family benefits), and 16(1)(f) (relating to equal guardianship) 16(1)(c) (relating to the rights of women during marriage and divorce).

⁵⁷ Convention on the Elimination of All Forms of Discrimination against Women, art. 3.

It is deducible from the reference to Quran and Sunnah that the idea of providing immunity to discriminatory religious personal laws worked as the primary motivation behind the reservations. Moreover, the political climate inclining to Islamic elements, too, influenced the manner in which the reservations were put.⁵⁸

In the year 1997, Bangladesh withdrew reservations from two articles and at present only retains reservations on Articles 2 and 16(1)(c). The CEDAW Committee has persistently been asking Bangladesh to withdraw its reservation from these two articles stating that they express the core objective of the Convention.

For example, under CEDAW, article 2 provides that States should:

- Enforce gender equality through national law and adopt legislation prohibiting discrimination against women, including sanctions.
- Establish the legal protection of the rights of women on an equal basis with men, and to ensure effective protection through national redress mechanisms.
- Refrain from discriminating against women, and to take action to eliminate discrimination against women by any person, organisation or enterprise.
- Abolish existing laws and practices, and repeal national penal provisions, constituting discrimination against women.

The Law Commission of Bangladesh has recently advised the Government of Bangladesh to rethink the reservations and withdraw it accordingly.⁵⁹ The latest State Party report submitted by Bangladesh to the CEDAW Committee positively expresses that the reservations will eventually be withdrawn.⁶⁰

The Committee on the Elimination of Discrimination against Women is a body of independent experts of women's rights from around the world that monitors implementation of CEDAW. The Committee fulfils a number of functions in this capacity, including:

- Considering reports, which are required to be submitted by States Parties to CEDAW on implementation of the Convention rights in their countries and issuing concluding observations on these reports
- Receiving communications from individuals or groups submitting claims of violations of rights protected under CEDAW
- Developing general recommendations on specific topics covered by CEDAW

States Parties to CEDAW are required to comply with a series of reporting procedures. This includes submitting national reports at least every four years on the legislative, judicial, administrative or other measures they have taken to implement the Convention.

⁵⁸ Law Commission of Bangladesh, *Report on a reference by the Government relating to reservation by Bangladesh in respect of certain articles of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, 1979, 1 July 1997, 6, <http://www.lc.gov.bd/reports/Report%20NO.%209%20of%201997%20web%20version.pdf>.

⁵⁹ Law Commission of Bangladesh, *Report on a reference by the Government relating to reservation by Bangladesh in respect of certain articles of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, 1979, 1 July 1997, 4, <http://www.lc.gov.bd/reports/Report%20NO.%209%20of%201997%20web%20version.pdf>.

⁶⁰ U.N. Committee on Elimination of Discrimination against Women, *Consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of all Forms of Discrimination against Women: Eighth Periodic Report of States Parties - Bangladesh*, para. 20, U.N. Doc. CEDAW/C/BGD/8 (29 May 2015).

Articles 8 and 9 of the Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women provide that the States Parties may permit the Committee to initiate inquiries into, investigate, report on and make recommendations on ‘grave or systematic violations’ of the Convention. These provisions, however, do not apply for Bangladesh since the country has placed the following declaration with regard to them:

“The Government of the People’s Republic of Bangladesh declares in accordance with Article 10 (1) thereof, that it would not undertake the obligations arising out of Articles 8 and 9 of the said Optional Protocol.”

States, including Bangladesh, are also required to report on specific thematic issues of particular importance, as indicated in the Committee’s General Recommendations. For example, ‘General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations’ requires States Parties to report on the legal framework, policies and programmes that they implemented to ensure the human rights of women in conflict prevention, conflict and post-conflict, and to provide information on the implementation of the Security Council agenda on women, peace and security (paras. 83-84).



Activity 5

- Do you think Bangladesh should withdraw the reservations? If so, why?
- Identify 10 measures that would need to be taken, upon withdrawing the reservation, to implement Bangladesh’s obligations under CEDAW article 2 in practice.

Gender-based violence against women constitutes discrimination against women within the meaning of CEDAW Article 1, and is a violation of women’s human rights,⁶¹ and engages all State obligations under Article 2 of the Convention.

(b) Right to access justice and remedies

In Bangladesh, Article 44 of the Constitution guarantees the right of every citizen to apply for redress to the High Court Division of the Supreme Court in accordance with Article 102 (1) for the enforcement of any of the fundamental rights conferred by Part III of the Constitution (Article 28(2) regarding equality of men and women in all spheres of state and public life appears in Part III).

The CEDAW Committee has affirmed that the right of women to access justice is “essential to the realization of all of the rights protected under the Convention...” and may be impeded by discrimination against women, based on gender stereotypes, stigma, and gender-based violence.⁶² The Committee further confirmed that under Article 5(a) of the Convention, States Parties “have an obligation to expose and remove the underlying social and cultural barriers, including gender stereotypes, that prevent

⁶¹ Committee on the Elimination of Discrimination against Women, *General recommendation No. 35 on violence against women*, (2017) para. 1, reaffirming the relevance *General recommendation No. 19 on violence against women*, (1992) [9].

⁶² Committee on the Elimination of Discrimination against Women, *General recommendation No. 33 on women’s access to justice* (2015), paras. 1 and 8.

women from exercising and claiming their rights and impede their access to effective remedies”.⁶³

One of the most important elements in securing access to justice and remedies on the basis of equality and non-discrimination is gender balance in law enforcement and judicial agencies. Operationalizing these rights and mainstreaming gender in law enforcement activities in terrorism cases also requires the effective representation of women in the law enforcement and judicial systems. Such representation is reflected in recruitment, retention and advancement of women at all levels. This is discussed more in depth in Chapter 3 of this Module.



Activity 6

When victims access the criminal justice system, they encounter law enforcement personnel with similar or different social and cultural practices and beliefs. What are some of the possible reactions of male and female personnel in the police, prosecution, and judiciary to the following categories of victims:

- A male victim of forced conscription into fighting?
- A female victim of forced marriage to a terrorist?
- A girl below 18 years who is forced into sexual slavery to a number of terrorists?
- A widowed victim of forced labour?

In light of the above questions, would the victims face similar or different limitations in claiming their rights before criminal justice systems? Why would this occur? In which areas would it be most evident?

How could the experiences of these individuals be improved in each scenario? Consider if these changes would take place through policies, laws or practices.



Further reading

- The Global Counterterrorism Forum has produced a document on Good Practices on Women and Countering Violent Extremism, which contains 22 good practices on women and gender in the context of countering violent extremism (CVE). It addresses how to counter women’s and girls’ involvement in violent extremism and terrorism, advancing their roles in CVE, and addressing women as victims

1.5 Gender equality as a Sustainable Development Goal for Bangladesh

In 2015, Bangladesh has adopted the 2030 Sustainable Development Agenda, which has placed gender equality and ending of all forms of discrimination against women as one of the global sustainable development goals (SDG) to be achieved by 2030. The corresponding SDG 5 underscored the significance of gender equality not only as a basic human right, but also as a pursuit with a multiplier effect, crucial and instrumental to accelerating sustainable development. Another important aspect of the Agenda in general is its inclusivity: all its goals, including Goal 5, aim at improving lives for all, promise sustained, transformative change, and commit to leaving

⁶³ Ibid, para. 7.

no one behind - not women, not children, not minorities, not migrants, not indigenous people, nor people with disabilities.⁶⁴

Nationally, with the aim of emerging as a high income country by 2041 by way of implementing Vision 2041, Bangladesh has adopted the Second Perspective Plan 2021-2041 and is currently working on preparing the 8th Five Year Plan 2021-2025 (8th FYP). The latter replicates the inclusive Agenda of SDGs and aims to ‘leave no one behind and to promote equitable and inclusive growth and development,’ considering primarily that without addressing the needs of people in vulnerable settings, the existing disparities cannot be removed.⁶⁵

Building on the evidence of backward socioeconomic groups/regions and the underlying factors behind their lagging development, several agendas for the 8th FYP having bearing on the SDGs have been identified. The 8th FYP policy framework aims to focus on four strategic pillars:

- Moderating income inequality;
- Reducing gaps in health, nutrition and education;
- Removing social and gender exclusion and discrimination; and
- Introducing explicit budgeting for the marginalized people and regions that lag behind.⁶⁶

1.6 Self-assessment questions



Self-Assessment Questions

- Bangladesh’s Seventh Five-Year Plan aims to achieve equal opportunities and rights for men and women and promote a gender-sensitive and gender-responsive culture in national policymaking through a gender mainstreaming approach.
 - (a) What does the term ‘gender mainstreaming’ mean?
 - (b) What seven actions are identified in the policy to contribute in achieving women’s empowerment and gender equality?
- List the three pillars of the National Action Plan for the Implementation of UNSCR 1325 in Bangladesh. How do these pillars relate to the protection and promotion of women’s rights in the fight against terrorism?
- Name at least three ways in which gender mainstreaming promotes the protection of women’s rights in criminal justice and counter-terrorism.
- Based on the gender considerations in the Bangladesh Police Strategic Plan, list three ways that gender mainstreaming should be applied in police reform.
- Name four obligations Bangladesh has undertaken as a State Party to CEDAW in order to advance gender equality and eliminate discrimination against women.
- What are Bangladesh’s core obligations under the Constitution and the CEDAW to ensure access to justice and remedies for violations of the rights to gender equality and non-discrimination?

⁶⁴ UN Secretary General’s High Level Panel on Women’s Economic Empowerment, *Leave no one behind, a call to action for gender equality and women’s economic empowerment*, p. 1.

⁶⁵ Dr. Shamsul Alam, “Leave no one behind– Challenging task,” *Financial Express*, 6 May 2020. Available at <https://thefinancialexpress.com.bd/views/leave-no-one-behind-challenging-task-1588779591> (accessed on 19 August 2020).

⁶⁶ Ibid.



Mourning family member of a victim of a terrorist attack
@ Rajib Dhar/Dhaka Tribune

2

GENDER ASPECTS OF TERRORISM OFFENCES



Learning objectives

By the end of this Chapter, you will be able to:

- Explain why terrorism offences formulated in a gender-neutral manner may have a different impact on women and men
- Identify gender dimensions of support and membership offences under AntiTerrorism Act, 2009, as amended
- Discuss gender dimensions of the use of suicide bombers
- Explain the relevance of alternatives to prosecution in terrorism cases and related gender dimensions
- Identify grounds for alternatives to prosecution, reduced sentences upon conviction, defences and mitigating circumstances applicable to persons involuntarily involved in the commission of terrorism offences

The obligation to bring perpetrators of acts of terrorism to justice applies equally to the conduct of women and men. Criminal justice actors should avoid perpetuating stereotypes suggesting that women are less culpable for committing terrorism offences or are incapable of acting of their own volition when it comes to violence and terrorism. Similarly, caution should be exercised not to overlook the gender premise of the society permeating different spheres while applying gender-neutral laws and policies.

The provisions of the AntiTerrorism Act (ATA), 2009 (amended in 2012 and 2013) criminalizing acts of terrorism and numerous forms of support to and complicity in acts of terrorism, do not distinguish between male and female perpetrators. As most criminal laws in Bangladesh, they are formulated in gender-neutral terms. Killing, kidnapping and the financing of acts of terrorism, to name just a few examples, are made punishable without distinguishing between the sex of the alleged perpetrators.

At the same time, it is important to recognize that laws that are formulated in gender-neutral terms may have a different impact on men and women. In most countries, counter-terrorism laws written predominantly by men respond to what has conventionally been seen as a primarily male threat. As noted by the UN Special Rapporteur on human rights while countering terrorism, women have been marginal to the conversations in which definitions of security are agreed and generally peripheral to the institutional settings in which security frameworks are implemented as policy and law.⁶⁷

⁶⁷ A/72/495, para. 29.

The present chapter explores the difference in impact that the criminalization of acts of terrorism in the ATA 2009, as amended, may have on women and men by employing the gender mainstreaming approach introduced in Chapter 1.

2.1 Gender roles in terrorist groups in Bangladesh

In the context of Bangladesh, terrorism or violent extremism leading to terrorism is generally male-dominated.⁶⁸ A number of militant organizations in Bangladesh such as the Jamaat-ul Mujahideen Bangladesh (JMB), the Ansar-al-Islam (AAI) and the Hizb ut-Tahrir-Bangladesh (HTB) have traditionally used women off-field, mainly for religious teaching, radicalizing, propaganda operations,⁶⁹ and in support roles as couriers and informants.⁷⁰ While the roles as radicalizer, mentor or propagandist still are in play, in recent times, women have been activated on-field in violent operations as well,⁷¹ as suicide bombers⁷² and combatants. Thus, the role of Bangladeshi women in terrorism has changed from being peripheral to more active and violent in field.⁷³

More often than not, in the context of Bangladesh, if not initially then ultimately, ‘female participation in terrorism is linked to female subordination and not ideological attraction since women militants in Bangladesh generally tend to have one or more male family members who are also involved in militancy’.⁷⁴ While a good number of female terrorists perform their roles as a manifestation of their obedience towards their husbands or male relatives who tend to radicalize them, some women also become intrinsically motivated either by the perceived notion of victimization of Muslims in general, crises in own lives and/or individual ideological conviction.⁷⁵ A motivation for harbouring a secondary goal relating to the propaganda of greater gender equality underscoring the role of women as important state builders, while still following Islamic principles, has also been identified as a source of motivation for some of the targeted women with educated background.⁷⁶

⁶⁸ Ali Riaz, Saimum Parvez, “Bangladeshi militants: what do we know?”, *Terrorism and Political Violence*, 2018.

⁶⁹ Saimum Parvez, “Bangladesh and India,” p. 43.

⁷⁰ Animesh Roul, “The Shifting Narrative of Women’s Role in Jamaat-ul-Mujahideen Bangladesh’s Islamic Jihad,” *Terrorism Monitor*, Vol. 16 Issue. 22 (2018). Available at <https://jamestown.org/program/the-shiftingnarrative-of-womens-role-in-jamaat-ul-mujahideenbangladeshs-islamic-jihad/> (accessed on 16 July 2020).

⁷¹ Animesh Roul, “The Shifting Narrative of Women’s Role.”

⁷² Mohammad Jamil Khan, Md. Kamrul Hasan, Arifur Rahman Rabbi, “Dhaka sees first female suicide bomber”, *Dhaka Tribune*, 25 December 2016. Available at <https://www.dhakatribune.com/bangladesh/crime/2016/12/25/dhaka-sees-first-female-suicide-bomber/> (accessed on 20 July 2020).

⁷³ Umme Wara, “New Trends of Radicalisation: Understanding Drivers of Female Radicalisation,” presented at the National Conference on Prevention of Violent Extremism from a Gender Perspective, Bangladesh Institute of Peace and Security Studies, November 2018. Available at [http://bipss.org.bd/pdf/Conference%20Report%20\(Gender\).pdf](http://bipss.org.bd/pdf/Conference%20Report%20(Gender).pdf) (accessed on 21 July 2020).

⁷⁴ Nazneen Mohsina, “Growing Trends of Female ‘Jihadism’ in Bangladesh,” p. 9.

⁷⁵ Shafi Md Mostofa, “Key Drivers of Female Radicalisation in Bangladesh,” pp. 27-31.

⁷⁶ Nazneen Mohsina, “Growing Trends of Female ‘Jihadism’ in Bangladesh,” p. 9.

Reports indicate that the neo-JMB is now recruiting women since they arouse less suspicion and can engage in community outreach efforts with greater access to families.⁷⁷ The primary strategic idea is of integrating women in the group's activities in a wide range of multidimensional roles in order to boost manpower of the group and to operate below the radar of the law enforcement agencies.⁷⁸ This implies that women's role is defined and determined by the strategic methods adopted by male-dominant decision-making groups in terrorist organizations and not by women themselves.

2.1.1 Women in support roles

Generally, most of the female militants are reported to be the family members of male operatives.⁷⁹ According to law enforcing agencies, in quite a wide number of cases, female radicalization occurs under the influence of their spouses.⁸⁰ Militants marry off their daughters, sisters and sisters-in-law to other militants for widening their base.⁸¹ Additionally, a relatively new tactic that is being used is to radicalize women on the false promise of romantic relationships.⁸² Moreover, the neo-JMB is also reported to recruit women beyond their immediate families and subsequently marry them off to the fighters.⁸³ This tactic is used to make sure that there is no outside breach into the organization and the network remains secure.⁸⁴ This phenomenon posits women in a support role in the terrorist organizations, in order to perform the functions of caregiver, nourisher, companion, doer of household chores and/or for sexual services.

Other support roles are more operational and logistical in nature. For example, women assist the terrorist groups as sympathisers, recruiters and safe housekeepers.⁸⁵ Educated and well-off women also take up roles of handling accounts of the members, financing terrorist events, alongside helping wives of militant leaders.⁸⁶ Women play the roles of preachers, propagandists and ideologues as well. Besides, they also come out as chat group administrators of various significant online social media platforms or as translators of extremist materials, and take up the important role of radicalizing and mentoring potential female terrorists.⁸⁷ Additionally, there are growing statistics of them being used as human shields in combat operations.⁸⁸

⁷⁷ IPI interview, journalist, Dhaka, February 2019, Mamunur Rashid, "Banned Huji, JMB Regrouping," 22 June 2009, <http://nation.ittefaq.com/issues/2009/06/22/news0808.htm>, quoted in Naureen Chowdhury Fink, *Bombs and Ballots: Terrorism, Political Violence, and Governance in Bangladesh*, International Peace Institute, February 2010, p. 13.

⁷⁸ Saimum Parvez, "Bangladesh and India."

⁷⁹ Nazneen Mohsina, "Growing Trends of Female 'Jihadism' in Bangladesh," p. 10.

⁸⁰ "Husbands force wives into militancy: DMP," *Daily Star*, 27 December 2016. Available at <https://www.thedailystar.net/city/militant-husbands-force-wives-militancy-dmp-1336231> (accessed on 17 July 2020); "Two female terrorist confesses in court" (translated from Bangla) *Prothom Alo*, 9 January 2017. Available at <https://www.prothomalo.com/bangladesh/article/F> (accessed on 19 July 2020).

⁸¹ Tipu Sultan, "Preparation for attacks by female terrorists?"

⁸² "Attempt to radicalize women on false promise of romantic relationships" (translated from Bangla), *Dhaka Tribune*, 22 July 2020. Available at <https://bangla.dhakatribune.com/bangladesh/E> (accessed on 21 July 2020).

⁸³ Tipu Sultan, "Preparation for attacks by female terrorist?"

⁸⁴ Mahfuza Liza, "Preventing Female Radicalisation: Perspective of Law Enforcement."

⁸⁵ Ali Riaz and Saimum Pervez, "Bangladesh Militants: What do we know?"

⁸⁶ "Financier of Aug 15 Nat'l Mourning Day attack plot arrested," *The Daily Star*, 5 April 2018. Available at <https://www.thedailystar.net/country/financier-august-15-national-mourning-day-in-bangladesh-attack-plot-arrested-1558552> (accessed on 19 July 2020); Md Esaraf Hossain, "Neo-JMB still a great threat" *Daily Sun*, 9 April 2018. Available at <https://www.daily-sun.com/printversion/details/300910/2018/04/09/NeoJMB-still-a-great-threat-> (accessed on 13 July 2020).

⁸⁷ Nazneen Mohsina, "Growing Trends of Female 'Jihadism' in Bangladesh," p. 8.

⁸⁸ Tipu Sultan, "Preparation for attacks by female terrorists?"

2.1.2 Women involved in violent acts

Direct and active involvement of women in violent acts is a relatively new trend in Bangladesh, as has been previously mentioned.⁸⁹ In this backdrop, a growing body of literature utilizes empirical evidence to suggest that women tend to possess agency in terrorist organizations.⁹⁰ This, however, is questionable.

During house raids, some women choose to commit suicide over surrendering to the law enforcing agencies.⁹¹ How much free will is exercised in such acts is yet to be clear. There has been at least one such case where a woman refused to self-detonate, despite her husband's explicit 'order' for doing so.⁹² The use of women as suicide bombers perpetuates a harmful sex stereotype within the terrorist groups as well: women can be 'expended', while male terrorists cannot be and need to be 'saved' for a bigger mission and greater cause.⁹³

Female direct involvement as perpetrators of terrorist activities in Bangladesh has increased in the last years due to a number of reasons. "First, following the [Holey Artisan] attack, Bangladesh's security forces have intensified its counter-terrorism efforts across the country. The increasing number of arrests has thinned out the male fighters and dented the operational capability of these networks. As such, 'jihadist' groups have been recruiting women to supplement their manpower and remain functional.

Second, female 'jihadists' offer operational advantages. For instance, they can get closer to their targets without being suspected. Women are usually considered to be passive and nonviolent, and are thus subjected to less rigorous security checks. Moreover, Bangladeshi security forces are dominated by males who cannot conduct rigorous physical checks on females for reasons of propriety.

Third, as females do not conform to any profile that would trigger law enforcement red flags, their radicalisation is less noticed by people in their social surroundings. For instance, the presence of women in militant dens is less likely to arouse public suspicion as they are assumed to be unlikely perpetrators of terrorist violence.

Finally, at the strategic level, female attackers attract more publicity and media attention, as they are perceived to generate greater psychological impact on the adversary or the target audience. Even symbolic participation by female militants in combat and training activities attracts more media attention compared to their male counterparts. All these imperatives often make female members highly effective actors for their organisations."⁹⁴

⁸⁹ Saimum Parvez, "Bangladesh and India," P. 43.

⁹⁰ Naureen Chowdhury Fink, "Bombs and Ballots."

⁹¹ Golam Mortuza, Ahmed Zaif, "Female suicide bomber this time!" (translated from Bangla), *Prothom Alo*, 25 December 2016. Available at <https://www.prothomalo.com/bangladesh/article/1046447> (accessed on 17 July 2020); Gazi Firoz, Krishna Chandra Das, "5 dead along with female suicide bomber," *Prothom Alo*, 17 March 2017. Available at <https://www.prothomalo.com/bangladesh/article/1110904> (accessed on 17 July 2020).

⁹² Shariful Islam and Shaheen Mollah, "Musa told wife to blow herself up," *The Daily Star*, 26 December 2016. Available at <https://www.thedailystar.net/frontpage/musa-told-wife-blow-herself-1335637> (accessed on 1 August 2020).

⁹³ Nazneen Akhter, "Increasing use of 'human bombs': women are children are being used on a wide scale" (translated from Bangla), *Prothom Alo*, 20 May 2018. Available at <https://www.prothomalo.com/international/article/1492671> (accessed on 29 July 2020).

⁹⁴ Nazneen Mohsina, "Growing Trends of Female 'Jihadism' in Bangladesh," p. 11.



Activity 7

- What does your professional experience tell you about the roles that women fulfil in terrorist groups in Bangladesh?
- Does your experience coincide with the statements made in the reports quoted in this section? Where does it differ?
- In your view, how and why do women become associated with terrorist groups? Does this differ from men's experience?
- What should be the consequences of these differences for the criminal justice response to terrorism in Bangladesh?

2.2 Gender Aspects of offences under the Anti-Terrorism Act, 2009, Anti-Terrorism (Amendment) Act, 2012 and Anti-Terrorism (Amendment) Act, 2013

It is important to emphasize that state obligations to bring perpetrators of acts of terrorism to justice applies equally to women and men. Criminal justice actors should avoid perpetuating stereotypes suggesting that women are less culpable for committing these offences or are incapable of acting of their own volition. At the same time, it is important to recognize that women may be differently and disproportionately impacted by the criminalization of certain terrorism-related offences in ways that may not have been envisaged by the legislator.

The commission of acts of terrorism, such as attacks with improvised explosive devices, killing and abduction, are only a part of the overall range of activities of terrorist groups. These groups are structured organizations in which some persons are immediately engaged in the commission of acts of violence, while many others enable them in “support roles”, such as securing money, food, arms and other resources through criminal or legal activities, recruiting new members, obtaining and disseminating vital information, or simply providing companionship and moral support.

The legislator in Bangladesh has clearly indicated that to defeat terrorist groups and provide justice to victims, it is necessary to bring to justice not only those immediately engaged in carrying out acts of terrorism, but also those who enable terrorist violence in support roles. Particularly, the ATA 2009 (as amended in 2012 and 2013) introduced numerous additional offences, such as “aiding and abetting”, “supporting”, “providing shelter”, “instigating”, to explicitly criminalize the actions of those who enable the functioning of terrorist groups without being directly involved in acts of violence. This is in line with international legal instruments against terrorism, including Security Council resolutions 1373 (2001), 2178 (2014), and 2396 (2017), and international conventions to which Bangladesh is a party, including the 1999 International Convention for the Suppression of the Financing of Terrorism.

The ATA 2009 makes these offences punishable with severe sentences, up to the penalty of life imprisonment in Section 12 of the ATA 2009 – clearly indicating the gravity of the conduct and the serious criminality of those who enable the activities of terrorist groups without committing violent acts of terrorism themselves.

The offences proscribed by the ATA 2009, as amended, are, on their face, gender neutral, as they do not provide any distinction between men and women committing them. However, as the

roles of men and women in terrorist organizations normally differ, this broadening of the scope of terrorism offences has important gender dimensions. Bangladeshi law criminalizes as serious terrorist offences not only the conduct of those who carry out violent acts of terrorism – nearly exclusively men according to the information summarized above in section 2.1 – but also the many support roles, which involve women.

The remainder of this Chapter will examine in more detail gender dimensions of selected offences under the ATA 2009, as amended. It will do so in four steps:

- First, looking at selected support offences (2.2.1);
- Second, considering the issue of suicide bombers (2.2.2);
- Third, questions related to sentencing (2.2.3); and
- Fourth, considering various criminal law principles, which could assist in designing gender-specific responses to ways in which women become involved in terrorism offences (2.3).

2.2.1 Selected support offences

In this section, several “support offences” in the ATA 2009, as amended, are reviewed. In considering the gender dimensions of these offences, it is important to ask how men’s and women’s roles in the Bangladeshi society and existing power relations and inequalities between men and women affect the choices and decisions of persons involved in supporting terrorist groups, harbouring terrorism suspects, concealing information about terrorism, or becoming members of a terrorist group.

Supporting and instigating terrorist activities

Section 9 ATA 2009, which criminalizes rendering support to terrorist groups for the commission of terrorist acts, provides:

- (1) If any person requests or invites someone to support any entity proscribed under Section 18 or arranges, directs or assists to organize a meeting, or makes a speech in a meeting with intent to support that entity, expedite or encourage its activities, he shall commit an offence.
- (2) If any person makes a speech in a meeting or disseminates any information through radio or television or any print or electronic media asking for supporting a proscribed organization or with intent to facilitating its activities, he shall commit an offence.
- (3) If any person is found guilty of any of the offences under sub-sections (1) or (2), he shall be punished with an imprisonment for a term not exceeding 7 (seven) years but not less than 2 (two) years, and in addition to that a fine may be imposed.

Similarly, **Section 13** provides punishment for instigating terrorist activities, by stating that:

If any person, by his activities or participation, prepares or distributes any document, or by transmitting any information through any print or electronic [or any other] media, or through any apparatus, assistance or technology or training, assists any person or entity knowing that the said document, apparatus, assistance or technology or training shall be used in committing any offence under this Act or any such person or entity shall use

the same for committing similar offences, he shall be deemed to have instigated terrorist activities; and he shall be punished with an imprisonment for a term not exceeding two thirds of the maximum punishment prescribed for that offence, or a fine, or with both; and if the prescribed punishment for that offence is death, then the punishment for the offence shall be imprisonment for life or imprisonment for a term not exceeding 14 (fourteen) years, but not less than 4 (four) years.



Focus: Should choosing to be the wife of a terrorist be considered “support to a terrorist group”?

From 2013 onwards, several European countries saw numerous women and girls travelling to Syria and Iraq to marry fighters of ISIL (Da’esh) or marry fighters through online ceremonies and then travel (or attempt to travel) to join their husbands.

The response of the criminal justice system to the conduct of these women and girls has varied from country to country. In some countries, the courts considered that supporting a fighter of a terrorist group as wife, doing household chores and bearing children, could not be considered an offence, while courts in other countries considered that this was a form of moral support punishable under counter-terrorism legislation. Other countries initially did not investigate and prosecute women returning from Syria and Iraq, but subsequently changed their approach based on an evolving understanding of the role women played in ISIL (Da’esh).



Reference

This case-law is discussed in more detail in Chapter 2 of the UNODC *Handbook on Gender Dimensions of Criminal Justice Responses to Terrorism*.

Providing shelter to an offender

Like numerous other counter-terrorism laws, the Anti-Terrorism Act 2009 makes it an offence to shelter, harbour or conceal a terrorism offender. **Section 14** ATA 2009, which criminalizes providing shelter to terrorists, provides that:

- (1) If any person, knowing that another person committed an offence under this Act or having reasonable grounds for believing the person to be an offender, provides shelter to or keeps in hiding that person with intent to protect him from the punishment, he, –
 - (a) if the punishment of such offence is death, shall be punished with an imprisonment for a term not exceeding 5 (five) years and in addition to that a fine may be imposed;
 - or (b) if the punishment of that offence is imprisonment for life or imprisonment for any other term, shall be punished for imprisonment for a term not exceeding 3 (three) years and in addition to that a fine may be imposed.

Spouses and other family members of terrorism suspects can find themselves in dramatic conflicts between their loyalty to their fugitive relative and the legal sanction of acts supporting terrorism, reinforced by the threat of prosecution and imprisonment. This conflict can have strong gendered implication. This may be the case where the fugitive is (most commonly) a male family member or

spouse, and the relative is a woman who may not be fully apprised of the information necessary to assess the wrongfulness of the conduct of the male family member. For this reason, the legislator in Bangladesh takes this conflict of loyalties into account by providing that:

(2) The provisions of this section shall not apply to the case where the offence of providing shelter or keeping in hiding mentioned in sub-section (1) is committed by husband, wife, son, daughter, father or mother.

Membership in a terrorist group

Under **Section 8** ATA 2009, which criminalizes membership in a terrorist group or proscribed organisation:

If any person is or claims to be a member of a prohibited entity under Section 18, he shall commit an offence and be punished with an imprisonment for a term not exceeding 6 (six) months, or a fine, or with both.



Activity 8

Under Section 8 ATA 2009, as amended, being a member of a terrorist group is punished with up to six months of imprisonment. Discuss the following:

- (a) What would be your criteria for establishing whether a person is a member of a terrorist group for the purposes of Section 8 ATA? Is there a procedure or oath to become a member of a terrorist group? How should a prosecutor prove that a suspect is a “member” for the purposes of Section 8 ATA?
- (b) Would the criteria differ between men and women, in light of the different roles they tend to play in terrorist activities? Are you aware of women convicted under Section 8 ATA?



Female police officer, Bangladesh
@ Visualhunt



Activity 9

In Bangladesh, too, there have been incidents of women choosing to follow their husbands who were JMB fighters into the group or to marry someone who they knew was a JMB fighter.

In your view, should the women's conduct in the following hypothetical cases be considered an offence under the ATA, as amended? If so, what offence(s) should these women be charged with?

- “A”, a young woman, married a member of a terrorist group and followed him to the group's camp, where she carried out domestic chores and raised the children resulting from the marriage. “A” was motivated by the comparably better economic situation in the terrorist group.
- “B”, a young woman, married a member of a terrorist group and followed him to the group's camp, where she carried out domestic chores and raised the children resulting from the marriage. “B” was committed to the terrorist group's ideology and wanted to support the group as wife to a fighter.
- “C” was already married when her husband decided to join the terrorist group. She followed him to the group's camp, where she carried out domestic chores and raised the children resulting from the marriage.
- “D” is a middle-aged woman. She successfully encouraged several young women from her village to become married to fighters of the terrorist group.

2.2.2 Female suicide bombers

The use of female suicide bombers has been a marked strategy of some terrorist groups since the late 1970s. In more recent years, the incidence of women committing suicide attacks has increased, and suicide attacks are becoming increasingly prevalent within some groups. Bangladesh, in particular, experienced its first female suicide bombing during a police raid at a den in Dhaka in December 2016. According to CTTC Bangladesh, the suicide bomber was the wife of a Bangladeshi militant operative belonging to the ISIL-inspired neo-JMB.

Cases involving apprehended (attempted) female suicide bombers must, as all other cases, be considered on their individual merits. Relevant factors to consider may include the circumstances surrounding the suspect's association with the terrorist group and the group's known modes of operation. Global reports from women and girls who have distanced themselves from terrorist activities establish that certain groups deploy as suicide bombers women and girls who have been victims of abduction, widows of fighters and women who refuse to be married to fighters. Other reports indicate that women and girls have been drugged and sent on suicide missions. Thus, while it should not be excluded that failed suicide bombers, and particularly, female suicide bombers, acted with full agency, from a criminal justice perspective, there are substantial grounds to very closely examine their culpability.

In cases involving duress and impaired mental capacity, alternatives to prosecution should be considered and mitigating circumstances should be taken into account in making decisions whether to prosecute, or, if prosecuted, in adjudicating these cases (see further, section 2.3 below).



Activity 10

Consider the following hypothetical scenario:

Law enforcement officers have raided a building in the outskirts of Dhaka, which has been used as a safe house by a terrorist group. Inside the building they found three women, as well as material to build explosive devices, including suicide belts. The investigation indicates that two of the women were intended to be used as suicide bombers, while the third woman was there as a “minder”, to manage the house and guard the suicide bombers.

Law enforcement officers have subsequently arrested “T”, the husband of the third woman, a middle-ranking operative in the terrorist group, who appears to have set up and managed the safe house.

The investigation yields the following information on the three women and the girl.

(1) “A” is aged 28. She is the wife of “T”, a mid-ranking operative in the terrorist group. She is the “minder” of the women in the safe house, i.e. she was guarding the other woman and the girl, doing her best to maintain their willingness to act as suicide bombers, and keeping the contact with the outside world. “A” claims that the terrorist group forced her and her husband into running the safe house by threats against their and their broader family’s lives. The investigators think that she might have valuable information on who supplied the terrorist safe house with the material to build the explosive devices and food, and regarding the network directing and supporting the safe house operations. She would probably be prepared to cooperate with the investigators if she was not charged or offered a substantially reduced sentence. She is also afraid of reprisals against herself and her family if she cooperates with the authorities.

(2) “B” is aged 23. She was in the house to be used as a suicide bomber. Her brother was killed in a counter-terrorism operation, although “B” claims that he had no connection to the terrorist group. “B” was motivated by promises from “T” and “A” to support her brother’s family with monthly payments, in particular to feed the five children, and by a desire to avenge her brother’s death.

(3) “C” is aged 19. In 2015, the terrorist group came to her village and forced her family to hand her over to be married to a fighter from the terrorist group. She lived with her “husband” for nearly two years, and has a child born in July 2017. In May 2018, her “husband” was killed in combat. “C” was moved to the safe house. “T” and “A” convinced her that it was best for her to become a “martyr” herself.

Which of the women should be considered a terrorist suspect and be charged with an offence? Which offences? What defences/mitigation pleas could be made on their behalf?



Reference

Defences and mitigating circumstances that may be available to some of the women in the above scenario are discussed in section 2.3 below.

Interviewing and witness protection: To investigate the case described in the scenario above, gender-sensitive interviewing skills will be key. Moreover, if the authorities in the hypothetical above decide to consider one or several of the women as witnesses instead of charging them, gender-sensitive witness protection measures will be very important. These topics are discussed in Chapter 3 of the present Module.

2.2.3 Sentences

The ATA 2009 makes the offences considered in the preceding section punishable by imprisonment, in addition with a fine. The time of the imprisonment varies from up to six months, in the case of membership of a proscribed entity, to imprisonment for life or imprisonment up to fourteen years, in the case of instigating terrorist activities.

In addition to these specific support offences, **Section 12** of the ATA 2009 also criminalizes the following acts as offences punishable with life imprisonment:

- aid and abetment of an offence;
- participation as an accomplice;
- organization or direction of others; and
- contribution.

To sum up, the provisions criminalizing the support roles that women typically fulfil in terrorist groups, which do not involve direct participation in acts of violence, are punishable by custodial sentences that may extend even to life imprisonment.



Focus: Comparison with sentences for ancillary offences under UK Terrorism Act

Under the United Kingdom's anti-terrorism legislation, persons found guilty of perpetrating acts of terrorist violence are liable to be punished by sentences comparable in severity to those available under the ATA 2009, as amended. The men found guilty of conspiracy to murder in relation to the 21/7 bomb plot in 2005, e.g., were sentenced to life imprisonment with a minimum term of 40 years.

The sentences available for support offences, however, are very different. Under the UK's Terrorism Act 2000, for instance, a person found guilty of support to a terrorist organisation is liable on conviction "to imprisonment for a term not exceeding ten years, to a fine or to both" (Section 12). Membership in a terrorist organisation is punishable by imprisonment not exceeding ten years (Section 11).



Reference

Sanctions for terrorism-related offences raise complex questions under international human rights law binding Bangladesh. For an in-depth analysis, see Module 4, *Human Rights and Criminal Justice Responses to Terrorism*, Chapter 6, of the UNODC Counter-Terrorism Legal Training Curriculum.

There are a number of legal grounds in Bangladeshi and international law justifying the imposition of lesser sentences, such as on ground of duress as a mitigating circumstance. Considering what is known about the circumstances under which women become associated with terrorist groups in Bangladesh (and many other countries), these mitigating factors may have a strong gender dimension. This topic will be examined in section 2.3 below.

Criminal justice practitioners also need to ask themselves, however, whether there may be gender stereotypes at work resulting in unjustified more lenient treatment of women committing terrorism offences. In a research article published in September 2018, two U.S. researchers argue that (in the United States and in Europe) “terrorism-related offenders who are women are less likely to be arrested, less likely to be convicted, and receive more lenient sentences compared to men” committing comparable offences.⁹⁵ They conclude that “the evidence suggests gender has *unjustly* affected formal responses to individuals involved in crimes motivated by violent extremism”.



Activity 11

Assume the following case: “S” is a 35-year old woman, trading vegetables at the town market. She was recruited by a terrorist group to keep her eyes open regarding movements of police, military and other forces in the town. In exchange for the information she provided to them, the terrorist group paid her a small monthly stipend over a one-year period. “S” was denounced by a neighbour and has in the meantime made a full confession to the police, who have brought a criminal case against “S”.

Charges were brought, among others, under Section 12 of the ATA 2009 for aid and abetment of an offence.

- (1) What arguments can be made in favour of bringing charges against “S”, and what arguments can be made against? What are the needs for laying down guidelines for prosecutors in Bangladesh, e.g. considering “public interest”?
- (2) What are the options available to the prosecution if they consider that the case is strong in terms of evidence and that it is in the public interest to prosecute “S”, but that a sentence of fourteen years imprisonment (as provided under ATA 2009 Section 12) would be excessive?

⁹⁵ Audrey Alexander and Rebecca Turkington, “Treatment of terrorists: how does gender affect justice?”, *CTC Sentinel*, vol. 1, No. 8 (September 2018), p. 24; and Ester Strommen, “Jihadi brides or female foreign fighters? Women in Da’esh – from recruitment to sentencing”, GPS Policy Brief 01/2017 (Oslo, Peace Research Institute, 2017), p. 3. The authors draw from multiple sources, ranging from in-depth case studies to expansive datasets.

- (3) Assume the prosecution has brought charges under ATA 2009 section 12 for aid and abetment of an offence and has proved its case beyond reasonable doubt. The judge is convinced that “S” is guilty as charged, but also that justice and the public interest will not be served by imposing the maximum fourteen-year prison sentence. What options does the judge have?
- (4) What is the difference between conviction and sentencing?

2.3 Alternatives to prosecution, availability of lesser sentences upon conviction and mitigating circumstances

In many cases, prosecution or prosecution leading to conviction disproportionately impact the offenders in the circumstances they happen to be in. Due largely to the effects of prosecution, its processes and inherent challenges, the suspects of criminal offences get exposed to numerous vulnerabilities. Similarly, conviction followed by sentences can run counter to the particular needs of the convicts in question in the backdrop of the circumstances that led them to commit the offences in the first place. For such cases, and with due regard to public interest, alternative measures to prosecution can be considered as an option. Such alternative measures primarily aim at rehabilitating the offenders and at helping them get reintegrated into their communities. In the Bangladeshi legal system, alternatives to prosecution are not available for terrorism-related offences. This implies that for terrorism offences, the only option is to prosecute the offender in the usual court settings.⁹⁶

There is, however, scope of non-custodial alternatives under the Probation of Offenders Ordinance, 1960, and the Special Privileges of the Female Inmates Act 2006 (unofficial translation). Aimed at benefitting the female inmates, the latter law was enacted in 2006 and focuses on rehabilitating the female inmates and helping them get trained while in prison, alongside envisaging an option for releasing them upon certain conditions.

Moreover, in the context of the legal system in Bangladesh, there is scope of bail and anticipatory bail. Bail provisions, in light of the Code of Criminal Procedure (CrPC), have a very significant gender element. While the bail provisions of the ATA 2009 (as amended) do not have a gender element as such, the Anti-Terrorism Rules 2013 have tried to fill in the gaps in this regard.

Conviction and sentencing are two different phases for a criminal case court proceeding to come to an end. Upon holding an accused as convicted, the decision of sentencing is taken by the court. Consideration of mitigating and aggravating circumstances ideally should come in play precisely at the point when conviction is made and the convict is yet to be sentenced. Mitigating circumstances, if duly presented and considered, can make way for lesser punishments for the accused, including women. As far as the availability of mitigating circumstances is concerned, judicial decisions acknowledge the scope for commuting the quantum of sentences by the judges, taking into account certain mitigating circumstances favouring the accused. The presentation of mitigating circumstances however faces some procedural hurdles in the context of Bangladesh, as discussed below.

⁹⁶ However, the public prosecutor, with the consent of the Court, may withdraw from the prosecution in accordance with Section 494 of the Code of Criminal Procedure, 1898.

2.3.1 Alternatives to prosecution and non-pressing of charges

A trend observable at the international level, including as a result of the expanded use of offences targeting preparatory acts and support roles, is that terrorism laws increasingly capture the conduct of – often large numbers – of:

- First-time offenders;
- People suffering from diminished mental capacity;
- Radicalized women and juveniles who have not been involved in violence yet;
- Persons involved in the “maintenance” of a terrorist group in roles that are far removed from violent action
- Persons who have become involuntarily associated with terrorist groups or victims of trafficking.

According to the information summarized in section 2.1 above, a large part of the women associated with terrorist groups fall into these categories (primarily first-time offenders, no direct participation in acts of violence). While there are of course also men falling into these categories, the information available on men’s and women’s roles in terrorist activities suggests that women are more likely to fulfil these criteria than men. Therefore, the question on how to deal with these terrorist offenders has an important gender dimension.

The presence among the persons suspected of having committed terrorism offences of many first-time offenders, persons who have not been directly involved in violence, raises complex questions of criminal justice strategy, such as:

- How should the criminal justice system deal with these categories of “terrorist offenders”?
- Should every case be investigated and, where the evidence suffices, prosecuted?
- What mechanisms are available to give flexibility to the criminal justice system?
- What alternative measures can accommodate the threat possibly emanating from persons who have been associated with a terrorist group but have not committed acts of violence?

Alternative measures aim to rehabilitate these persons and prepare them for reintegration into their communities in “alternative settings” to the criminal justice system. The United Nations Secretary General, in the 2017 Report on women and peace and security, “welcome[d] efforts by Member States to initiate human rights-based and gender-sensitive approaches to the rehabilitation and reintegration of returnees and victims, released prisoners *and suspects who qualify for alternatives to prosecution*” (emphasis added).⁹⁷

When determining whether or not to prosecute a case, it would be worthwhile to establish whether the offence or the circumstances of its commission are of such a nature that a prosecution is required in the public interest, taking into account interests of the community, suspect and the victim. Factors to consider in assessing where the public interest lies include the seriousness of the alleged offence, and the existence of aggravating or mitigating factors. Mitigating factors, which “tend to reduce the seriousness of the offence and hence the likelihood of a prosecution being required in the public interest”, include cases where there has been a long delay between the date of the offence and the trial.⁹⁸

⁹⁷ S/2017/861, para. 47.

⁹⁸ Ibid, para. 8(a)(iv). Note that a decision not to prosecute a complex case on public interest grounds must be brought to the notice of the Attorney General within two days of taking the decision, as per para. 6.

Other factors to consider in assessing whether the public interest requires a prosecution are stipulated to include, *inter alia*:

- The availability and efficacy of any alternatives to prosecution
- Whether the consequences of a prosecution or a conviction would be disproportionately harsh or oppressive in the particular circumstances of the offender.

While in the criminal justice system in Bangladesh, the prosecutors do not have any discretion in determining whether or not to prosecute a case, *inter alia* taking into account interests of the community, suspect(s) and the victim(s), under Section 40(2) of the ATA 2009, no court shall take cognizance of any offence under this Act without the prior sanction of the Government.⁹⁹ Section 40(2), if applied with caution and with a gender perspective, may be of aid in paving way for alternatives to prosecution.

Additionally, under Section 494 of the CrPC, any Public Prosecutor may, with the consent of the court, before the judgment is pronounced, withdraw from the prosecution, of any person either generally or in respect of any one or more of the offences for which he/she is tried; if such withdrawal is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences; if it is made after a charge has been framed, or when under this Code no charge is required, he/she shall be acquitted in respect of such offence or offences.

It will not be out of place to mention that Bangladesh has a statutory mechanism called Alternative Dispute Resolution (ADR) that is applicable, by way of mediation or arbitration, though mostly in civil cases.¹⁰⁰ With regard to criminal cases, Section 345 of the CrPC 1898 provides an exhaustive list of compoundable offences, entailing the possibility of settling them between the parties without the court having to decide them. This, however, is not available for offences under the ATA as amended.

2.3.2 Availability of non-custodial measures

The Probation of Offenders Ordinance 1960 allows courts to sentence someone to something other than a fine or imprisonment usually in non-grievous cases – conditional discharge or release on probation.

In any case, Section 5 of the Ordinance establishes that where a court is of the opinion that the offender – “having regard to the circumstances including the nature of the offence and the character of the offender” – should not be sentenced to imprisonment, they can order their release on probation. The use of probation under the Ordinance has a strong gender dimension, as it has been extended for women convicted of any offence not punishable with death, whereas a man convicted of an offence punishable by death, life imprisonment, or certain other offences in Chapter VI or VII of the Penal Code 1860 (e.g. offences against the State, extortion by putting a person in fear of death or grievous hurt, offence of harbouring robbers or dacoits etc.) is not entitled to be released on probation.

There is lack of clarity regarding the use and application of this Ordinance by the courts. There is ‘absence of a comprehensive policy, lack of awareness and capacity-building among the concerned officials, and lack of clarity in the laws themselves [on the application of the Ordinance to cases under

⁹⁹ This is iterated in the Anti-Terrorism Rules 2013 as well: Rule 35(1) states that no Court shall take cognizance of any offence under the Act without prior sanction of the Government.

¹⁰⁰ See, for example, Sections 89A, 89B, 89C of the Code of Civil Procedure 1908.

special laws like the ATA 2009 (as amended)] and administrative accountability with regard to the granting of probation.¹⁰¹

In 2006, a law was enacted entitled the ‘Special Privileges of the Female Inmates Act’. This law envisages the provision of certain special privileges to the female inmates. According to Section 3 of the Act, special privileges shall include release upon conditions, vocational training, provision of after-care service to the female inmates trained in trade courses while in prison with the help of social welfare department, and any privilege as may be declared by the government through notification in official gazette. Section 4 of the Act says that any female sentenced to imprisonment for any term above one year may be eligible for special privileges under the legislation upon completion of 50% of the prison term.

Section 5 lists certain grounds on which a female inmate shall not be eligible for availing the special privileges provided for the Act. In light of this Section, female inmates who are sentenced to death, those who are sentenced to life imprisonment, women who are convicted of offences of sedition, women who are convicted under the explosives Act, Arms Act or any Act related to intoxicants, shall not be eligible to avail the ‘special privileges’ under the Act. This law does not explicitly mention ‘terrorism’ and hence is applicable to women convicted and sentenced under the ATA 2009, as amended, except for women sentenced to life imprisonment or death thereunder.

The Rules laid down under the Act lay down the method of applying for special privileges by the female inmates. Applications, according to the Rules, need to be made through the jail authority(ies) to the National or District Committee (constituted respectively under Section 6 and 9 of the Act of 2006). Under Rule 4(3) of the Rules, probation officer shall take note of the following in considering an inmate for special privileges that she applied for:

- a. past family history;
- b. present psychosocial and emotional conditions;
- c. educational qualification and experience;
- d. work skills and enthusiasm;
- e. any other matters.

Under Rule 5, District or National Committee, while entertaining the applications made thereto through the probation officers under Rule 4, shall consider the following-

- a. whether the inmate stays in the prison with her child;
- b. whether her children stay at home;
- c. health conditions of the inmate and if she has any special underlying health conditions/illnesses;
- d. whether the inmate has any disabilities;
- e. the educational qualification of the inmate;
- f. age of the inmate;
- g. socioeconomic conditions;
- h. nature of the case, quantum of sentence awarded and sentence already undergone;
- i. information with regard to vocational training or education;
- j. any other matters.

The 2006 Act, if widely and properly applied, can indeed benefit female inmates. In this regard, sensitizing the relevant officials is key.

¹⁰¹ BLAST and PRI, *Development and Use of the Probation System in Bangladesh*.

2.3.3 Availability of bail

Section 32 of the ATA 2009 (as amended) provides that no person accused of an offence punishable under the Act shall be enlarged on bail by a Magistrate or a Judge, unless:

- (a) the public prosecutor is given the opportunity of being heard in respect of bail order; and
- (b) the [Magistrate or Judge] is satisfied that there are reasonable grounds to believe that the accused may not be found guilty of the offence at the trial and records in writing his reasons of the grounds for being so satisfied.

The substantive provision regarding bail (Section 32(b) is particularly rigid as well as genderneutral. However, the Anti-Terrorism Rules 2013 fill in the gap in this regard. Rule 35(4) starts off by stating that for an offence punishable under the ATA, any person who is directly involved in the commission of the offence or the principal offender shall not be enlarged on bail if-

- (a) the prosecution is not given adequate opportunity of being heard where the prosecution raised objection against enlarging the accused person on bail; and
- (b) the Tribunal is satisfied that there is reasonable cause to believe him to be guilty for the alleged offence.

The following sub-rule (Rule 35.5) makes an exception by stating that if the accused person as mentioned in sub-rule (4) is a woman or child or physically sick or infirm, and the Tribunal is satisfied that there will be no miscarriage of justice if the accused person is enlarged on bail, the Tribunal may pass an order granting him/her bail.

It will not be out of place to mention that the CrPC, 1898 (applicable to criminal cases in general, except for special laws providing for special provisions) states in the proviso to Section 497(1) that:

[..] the Court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such an offence be released on bail.

While mentioning the mere ground of being a woman may seem to be discriminatory towards the male accused on ground of sex, the word ‘may’ in both the CrPC and the Anti-Terrorism Rules mitigates the apparent discriminatory edges, to a certain extent. Therefore, although the powers are wide, the judicial discretion can always make room for the judges’ self-restraint; however, it would depend upon facts and circumstances of the cases concerned.¹⁰² When there is reasonable apprehension that the accused may abscond on bail or that there is possibility that the witnesses will be tampered with, the court can exercise self-restraint. However, gravity of the offence charged is not by itself sufficient to refuse bail; reasonable grounds for believing that the person seeking bail is guilty of such offence must exist in this regard.¹⁰³

As per Section 498 of the CrPC, 1898, the High Court Division or Court of Sessions may in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail and allows a person to apply to the High Court Division or Court of Sessions for bail before they

¹⁰² *Patwary Rafiquddin Haider v State and another* (HCD) Criminal Miscellaneous Case No. 9087 of 2001 (LEX/BDHC/0031/2002).

¹⁰³ *Captain (Rtd) Nurul Huda v State* (AD) Criminal Appeal No. 20 of 2002 (LEX/BDAD/0011/2002).

are arrested in non-bailable cases (i.e. bail in anticipation of arrest or anticipatory bail). When the bail is granted under Section 498, the person must be allowed on bail and may not be kept in detention at all. As per the judicial decisions, in using discretion under Section 498, the court should take into account the *age*, *sex*, and *health* of the accused.¹⁰⁴

Section 499 of the CrPC provides for the requirement of bond and sureties to accompany the bail and has certain significant gender dimensions. It states that before any person is released on bail or released on his own bond, a bond for such sum of money as the court, thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed. Section 499 further states that if the case so requires, the bond shall also bind the person released on bail to appear when called upon at the High Court Division, Court of Session or other Court to answer the charge.

The conditions enshrined in the Section 499 are gender-neutral, however they can disproportionately affect anyone, including women. Women may be at a particular disadvantage in situations where they cannot leave home without being accompanied by male relatives because transport to the respective police station is not affordable or feasible, or because reporting times would jeopardize caretaking responsibilities. The conditions for reporting to the authorities can be tailored on a case-by-case basis considering the specific needs, backgrounds and disadvantages of women, across classificatory distinctions and intersections.

At present, reports suggest that a vast number of militants, including women, are on bail and are in hiding or have disappeared.¹⁰⁵ There also remain confusions regarding the application of the bail provisions of ATA 2009 (as amended) in different courts. Considering the inherent intricacies of terror offences and those of counter-terrorism efforts, the right balance of security and personal liberty needs to be judiciously struck. Generally, for both the sexes, on a casebycase basis, conditions of reporting need to be determined, alongside crafting proper surveillance measures for the people out on bail.

2.3.4 Lesser sentences and mitigating circumstances

Even though the Penal Code 1860 does not provide an exclusive list of mitigating factors that must be considered by the judges when deciding on sentencing, several categories of mitigating circumstances can be found in the case laws. In the *State v Md Masud Rana and Anr* (2015)¹⁰⁶, the High Court Division of the Bangladesh Supreme Court considered the lack of past records of criminal activity and not taking any leading role in the crime as mitigating circumstances in favour of the accused. A similar view was also held by the Appellate Division in *Rahmat Ali alias Shukkur v The State* (2013)¹⁰⁷, where the fact that the accused was a minor at the time of the commission of the offence was considered as a mitigating factor. Old age was also considered as

¹⁰⁴ *Md. Ayub v State* 11 DLR (WP) 118.

¹⁰⁵ Arifur Rahman Rabbi and Ahmed Alam, “With 300 militants out on bail, is Bangladesh safe?” *Dhaka Tribune*, 4 June 2019. Available at <https://www.dhakatribune.com/bangladesh/militancy/2019/06/04/with-300-militants-out-on-bail-is-bangladesh-safe> (accessed on 24 July 2020); “Top militants go hiding after bail,” *The Daily New Nation*, 30 April 2019. Available at <http://thedailynewnation.com/news/214202/top-militants-go-hiding-after-bail.html> (accessed on 27 July 2020).

¹⁰⁶ 35 BLD (HCD)

¹⁰⁷ 2 LNJ (AD)

a mitigating factor in decisions like the *State v Dr Md Nurul Islam* (2014)¹⁰⁸ and the *State and Ors v Tahazzel Hossain Nura and Anr* (2015)¹⁰⁹. In *State v Bidhan Chandra Roy* (2014),¹¹⁰ young age was considered as a mitigating factor.

A more comprehensive idea about mitigating factors can be gotten from the case the *State vs Oyshee Rahman* (2017),¹¹¹ in which a teenage girl turned herself in after murdering her parents, where ‘mitigating evidence’ was observed by the Court to include mental problems of the offender, remorse, youth, childhood abuse or neglect, a minor role in the [commission of the offence], or the absence of a prior criminal record [...]. In the said case, minority, surrendering to the police by the perpetrator on her own, mental derailment, absence of history of prior criminal activity, were duly considered as mitigating factors, in order for the Court to go for life imprisonment instead of death penalty.

In a recent study¹¹² a good number of trial court judges were interviewed and thereby, certain mitigating factors have been underscored, including the below:

- Tender age of the offender
- Old age of the offender
- Offender being a woman
- Poor financial condition of the offender / offender being the sole earning family member
- Offender having no criminal record
- Absence of premeditation
- Severe physical illness
- Offender being a lactating mother
- Physical disability
- Mental condition/illness

While treating the mere fact of sex (being a woman) as a mitigating factor would not be gendersensitive and free from discrimination, the other grounds seem well thought out mitigating circumstances to be judiciously considered.

As a result of this jurisprudence based on decisions handed down by the higher judiciary of the country over the years, such mitigating circumstances, though not explicitly enumerated in different legislation, are still available for the judges’ consideration.

However, there exists a procedural hurdle in this regard in Bangladesh: ‘[u]nlike many jurisdictions, Bangladeshi laws do not make provision for pre-sentence reports containing various offender related sentencing factors’ except for in the cases of juvenile trials (see, Children Act 2013 Section 31).¹¹³

Formerly in Bangladesh, there was a statutory provision (Section 265K(2) of the CrPC, 1898) for separate sentencing hearing for trials before a Court of Sessions. However, the provision was repealed in 1983.¹¹⁴ As a result, defence lawyers are only allowed to make mitigation pleas during

¹⁰⁸ 22 BLT (HCD)

¹⁰⁹ 67 DLR (HCD)

¹¹⁰ 66 DLR (HCD)

¹¹¹ 25 BLT (HCD)

¹¹² “The Death Penalty Regime in Bangladesh,” Bangladesh Institute of Law and International Affairs, April 2019, p. 46.

¹¹³ *Ibid.*, p. 50.

¹¹⁴ The CrPC second amendment ordinance 1983 (Ordinance no. XXXVII of 1983 Section 3).

the trial phase.¹¹⁵ This is a serious hurdle as from the beginning till the end of trial, defence lawyers emphasize on pleading innocence, and conviction and sentencing get viewed almost as one single phase of the proceedings.

An important observation was made by a higher judiciary with regard to this:

‘In Bangladesh there is no provision or scope to argue in mitigation or to bring to the notice of the Court any extenuating facts and circumstances in any given criminal trial. There is no provision of sentence hearing ... It is our view that it is imperative that such provision should exist, particularly in view of the fact that in our country the adversarial system denies the accused any opportunity to put forward any mitigating circumstances before the court. Even the most senior advocates will fight tooth and nail to maintain their client’s innocence. As a result, in our criminal justice system, the accused from the beginning to the end of the trial will maintain a plea of ‘not guilty’ and since no separate date is fixed for sentencing the accused, there is thereby no opportunity to put forward any mitigating and extenuating circumstances’.¹¹⁶

Mitigating factors may be particularly important to enable the court to take into account the nature of some women’s involvement in acts of terrorism in Bangladesh, as discussed above. This may account for, for example:

- A subordinate role in the commission of the offence
- Impaired capacity, for example, due to administration of drugs
- Circumstances of duress (see section 2.3.4 below).

2.3.5 Duress

The defences of duress, compulsion or necessity are not mentioned in the ATA 2009 as amended but are provided as statutory defences in other criminal statutes. Duress also exists as a common law defence.

For example, the Penal Code, 1860, Section 94 provides that:

Except murder, and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence: Provided the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

¹¹⁵ ‘The Death Penalty Regime in Bangladesh,’ p. 51.

¹¹⁶ *Bangladesh Legal Aid and Services Trust (BLAST) and another v Bangladesh and others* 30 BLD (HCD) 2010 194.

2.4 Self-assessment questions



Self-Assessment Questions

- Does Bangladeshi law treat terrorism-related offences committed by women differently from those committed by men?
- List three offences under the ATA 2009, as amended, that may have a gendered impact, and explain why these provisions may have a particular and different impact on women.
- List three characteristics of the criminalization of support to acts for terrorism and terrorist groups under the ATA 2009, as amended.
- Explain the gender dimensions of the use of suicide bombers by terrorist groups.
- List three criteria for applying alternatives to prosecution that may apply in terrorism cases in Bangladesh, referring to international and Bangladeshi policy documents. Discuss their particular relevance to female offenders.
- Can the defence of duress apply in terrorism cases?



Police work at the control room of the National Emergency Service 999, Dhaka @Prothom Alo



3

GENDER DIMENSIONS OF THE PREVENTION, INVESTIGATION AND PROSECUTION OF TERRORISM OFFENCES



Learning objectives

By the end of this Chapter, you will be able to:

- Understand the gender impacts of investigatory powers exercised in the course of counter-terrorism investigations, particularly search and seizure powers, and identify good practices in the gender-sensitive application of these powers
- Identify gender-sensitive measures, which can be implemented when interviewing victims, witnesses and suspects involved in terrorism cases
- Identify gender-sensitive measures, which can be implemented when applying victim and witness protection measures

This Chapter will examine gender-related issues that may arise in the course of the investigation and prosecution of terrorism offences. The issues discussed are not unique to terrorism cases, but they are of particular relevance in the counter-terrorism context.

3.1 Gender aspects of search and seizure powers

Searching persons, vehicles and buildings is a key measure to disrupt preparations for acts of terrorism and thereby prevent them, to detect persons involved in the preparation of acts of terrorism, and to seize objects that can provide important leads for investigations and serve as evidence. Cordon and search operations are also tactics adopted by military forces in counter-terrorism operations in areas where these groups operate.

Searches are an interference with the private sphere of the persons concerned that has, in most contexts, a strongly gendered connotation, with potentially different impacts on men and women.

It is also important to be aware that, in many circumstances, the impact of searches goes beyond the persons directly affected. Frequent or systematic searches will have an impact on the entire community, as all persons will adapt their conduct to the possibility or likelihood of being searched. In circumstances where women's movement in the public space, outside their homes, is governed by restrictive social norms, the likelihood of being searched can have a significant effect on women's participation in public life and can limit their ability to earn a living or take care of the household.

3.1.1 Constitutional rights

The right to respect for privacy of individuals, their homes and family lives is the right that foremost comes to mind when we consider the impact of search and seizure powers in the course of investigations.

It is protected in section 43 of Bangladesh Constitution, which states that:

“Every citizen shall have the right, subject to any reasonable restrictions imposed by law in the interests of the security of the State, public order, public morality or public health:

1. to be secured in his home against entry, search and seizure; and
2. to the privacy of his correspondence and other means of communication.”

Where religious premises are searched, such as churches, monasteries or mosques, or when persons are ordered to remove clothing that is required by religious norms, this can constitute an interference with freedom of religion and can even amount to sexual harassment.¹¹⁷

It is important to note that the right to privacy (and the right to freedom of religion) are among the constitutional rights that can be limited by legislation for reasons of public order or morality. Indeed, legislation that provides for the investigatory powers of law enforcement is a typical circumstance in which public safety and order make limitations to the right to privacy of persons and their homes necessary.

Where search powers are used in an intrusive and even aggressive way, this may raise issues of respect for the dignity of the human person and of the prohibition of inhuman and degrading treatment. Article 35 (5) of the Bangladesh Constitution provides:

“No person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.”

The prohibition of inhuman or degrading punishment and treatment in Article 35 is a right that cannot be limited, and that cannot be derogated from, even for the purposes of counterterrorism.

3.1.2 Searches of the person

With regard to body searches, section 52 CrPC provides:

“Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman, with strict regard to decency.”

Similarly, Regulation 482 of the Police Regulations Bengal states that, in the court, the court officer shall “have the female prisoners searched by a woman”.

¹¹⁷ *Advocate Md. Salauddin v Bangladesh* 63 DLR 2011, para 14.

The rules concerning searches give the relevant authorities a margin of discretion to implement these measures in a way that appropriately balances the requirement of public security and counter-terrorism with those of the right to privacy and other rights, particularly women's rights: searches must be necessary and proportionate, and must be made "decently".

To properly exercise this discretion, it is of great importance that the persons carrying out the searches receive clear instructions and are well trained in the application of the instructions they receive. This is accordingly a responsibility of the commanders of the forces carrying out searches.

Key considerations that should ideally be taken into account while carrying out searches include:

- Respect: all stops and searches must be carried out with courtesy, consideration and respect for the person concerned. Every reasonable effort must be made to minimize embarrassment that a person being searched may experience.¹¹⁸
- Location: can the location of the search have a differentiated impact according to gender? Depending on the context it can, particularly if taking place in public spaces where women may not be welcomed or public spaces traditionally occupied by men; seeing women stopped and searched in those locations may have a stigma effect on them and may marginalize them even further.
- Religious attire: when ordering an individual to remove any religious attire, religious and gender sensitivity requires that State agents ensure that this is done out of public view and in the presence of agents of the same sex as the person being searched.
- Body searches: in all cases body cavity searches must be conducted only in very limited and specific circumstances when absolutely necessary and as a means of last resort to achieve the security objective. They must be performed only by trained health personnel of the same sex as the person being searched.
- Gender of the searching officers: it is the responsibility of superiors planning stop and search operations to ensure that a sufficient number of female officers are available to search women.

Particular challenges may arise when military forces are asked to contribute to maintaining public security [*e.g. engagement of Bangladesh Army as was seen in the context of enforcing COVID-19 mitigating measures*] and are, therefore, involved in the searching of persons. It will be the responsibility of civilian decision makers and military superiors to ensure that, if military forces are to search civilians, the military personnel have received adequate training and clear instructions.

Yet another challenge may arise in circumstances where stop and search are carried out by government-aligned militias.

¹¹⁸ It is to be noted that stops and searches in Bangladesh are not regulated by any legislative framework and accordingly are prone to abuse.



Activity 12

Assume that following a suicide bombing attack in an urban area the authorities decide to establish stop and search measures at markets and in strategic places in the urban area to disrupt future attempted attacks and the smuggling of weapons and explosives.

What elements should a set of standard operating procedures for the officers involved in the stop and search operation include to ensure that it is gender sensitive?

3.1.3 Searches of houses and places

Many of the considerations discussed above regarding the searching of persons apply also to the searching of private homes, other premises, and vehicles. Sections 102 and 103 of the CrPC set out a series of general rules that apply to all searches. According to the CrPC, any person who is residing or is in charge of a place to be searched must allow the officer to enter and search. If entry into a place cannot be so obtained, it shall be lawful for the officer or other person executing the warrant ‘to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance.’¹¹⁹ Every search must be conducted in the presence of at least two witnesses, who must sign the list of items removed from the place of search.

According to Regulation 280 (e) of the Police Regulations Bengal, searches “must be so arranged as to cause as little inconvenience as possible to the inmates, and especially to women”.



Tools

- Counter-Terrorism Implementation Task Force, Working Group on protecting human rights while countering terrorism, Basic Human Rights Reference Guide, The Stopping and Searching of Persons, March 2014
- London Metropolitan Police, “Stop and search of people of different gender to the searching officer”

Interviewing female victims, witnesses and suspects

Integrating a gender perspective into the interviewing of victims, witnesses and suspects is important in order to, first, increase the likelihood that women cooperate with the law enforcement and justice authorities in the investigation and prosecution of terrorism offences, and second, to protect women who are victims or witnesses of acts of terrorism from retraumatization by contact

¹¹⁹ See Sections 102(1), 102(2) and 48 of the CrPC, 1898.

with the justice system, to prevent stigmatization by their family or community or retaliation.

Interviewers must be aware of factors that may prevent victims and witnesses from coming forward or from cooperating with authorities. Most of the following factors are relevant to both women and men, but – under the socioeconomic circumstances of Bangladesh – may particularly apply to women:

- Illiteracy
- Limited understanding of legal procedures
- Sociocultural norms that may prevent female victims and witnesses from coming voluntarily to police stations or other places where witness statements are normally taken
- A feeling of powerlessness and lack of trust in the ability to obtain justice
- Fear of violence from the authorities or from initial perpetrators or community or the very people who are supposed to help them; and
- Under-representation of women in criminal justice, legal, and counter-terrorism professions.

There are a number of measures that law enforcement and justice authorities can adopt to overcome or at least mitigate these challenges:

- Raise women's awareness, through public education programmes, of their equal rights to access justice and equal duties to collaborate in the investigation of offences;
- Raise awareness of measures to protect women against negative repercussions of collaborating with the authorities;
- Consider the use of local language for these awareness raising measures;
- Consider whether it is possible to conduct interviews in locations other than the police station, where the victim, witness or suspect will feel safer and more at ease;
- Partner with community leaders, religious and traditional authorities and women in leadership positions in the community.

3.2.1 Interviewing female witnesses

- Witnesses are likely to be more confident and helpful if they are assured of their safety prior to interviews or testimony. Failure to adequately protect witnesses, or assure them of protection prior to, during, and after interviewing may adversely affect the quality and quantity of evidence gathered from witnesses, particularly female witnesses who may have greater fear of social stigma and reprisal.
- Investigators should inform witnesses in plain language of the existing mechanisms to protect them, including possible mechanisms to ensure confidentiality of their statements. They must not, however, make promises of protection that cannot be maintained.
- In the case of witnesses who are also victims, investigators should be aware that the presence of a psychologist or other mental health professional can be conducive to healthy and effective questioning.
- Investigators must also ensure that they supplement all witness/victim testimony with physical documentation of injuries or trauma. Every statement should be recorded by default.

Additionally, the recruitment, training, and retention of female law officers and counter-terror practitioners is an essential element to support interviewing of female witnesses.

3.2.2 Interviewing female suspects

The Constitution of Bangladesh, alongside requiring that no person be subjected to torture, also protects the right of the accused against self-incrimination. Under Section 161 of the CrPC 1898, a person supposed to be acquainted with the facts and circumstances of the case while being examined orally by any police officer, shall be bound to answer all questions relating to such case put to him, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

The Torture and Custodial Death (Prevention) Act 2013 also prohibits torture and makes the same a punishable offence.¹²⁰ The law has brought both physical and mental torture within its purview. The UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has observed that the use of illegal interviewing tactics is in part based on the erroneous assumption that mistreatment and coercion are necessary to obtain confessions or to elicit information.¹²¹ Women held in police custody are at a particular risk of sexual abuse and other forms of violence used to intimidate and coerce suspects into producing information or confessions.¹²² Bangladesh, as party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment, 1984, has an obligation to take adequate measures to ensure that such violations do not occur.

The Appellate Division of the Supreme Court has categorically espoused that:

“No law enforcement agencies shall inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor shall any law enforcement agencies invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.”¹²³

In interviewing female suspects, following points need to be adequately considered:

- Avoid gender stereotypes: there is often a stereotype that women become involved with terrorist groups because they have been coerced, or for more emotional and less logical reasons than men. Many women are in fact often driven by the same factors as men.
- With female suspects linked to terrorist groups, it may be difficult to separate involvement with the organization into categories of ‘forced,’ and ‘voluntary’ assistance or support for the organization.
- In spite of the stereotype that women become associated with terrorist groups against their will, female suspects are often more likely to face social stigma arising from their links to the organization, running the risk of isolating and alienating themselves and their children.
- It is possible that women suspected of involvement with terrorist groups may have been indoctrinated over a long period of time, as well as possibly being abused physically and sexually, making it more difficult and/or dangerous for them to cooperate with terror investigations.
- The presence of female officers and practitioners is encouraged – both to create an environment in which female suspects feel safer and to reduce the risk of sexual violence.

¹²⁰ The Torture and Custodial Death (Prevention) Act 2013, Sections 13, 15.

¹²¹ Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/71/298).

¹²² UNODC, *Handbook on Gender Dimensions of Criminal Justice Responses to Terrorism*, p. 71.

¹²³ *Bangladesh v Bangladesh Legal Aid and Services Trust and others* 8 SCOB 2016 AD 1.



Activity 13

Law enforcement has apprehended a 19 year-old young woman would-be suicide bomber. The woman was forced by her older brother to follow him and join a terrorist group when she was 15 years old. Now that she has been apprehended by legal authorities:

- Who should conduct the interview of the female suspect, and who else should be present during this interview?
- Should the female suspect be held in general detention in a prison or jail? What are the risks of holding her in such detention?
- What issues arise from her status as an accomplice to the terrorist group, and how should the interview deal with this complication?
- What is the best way for the interviewer to ensure full cooperation from the female suspect prior to, during, and after the interview?



Tools

The UNODC *Handbook on effective prosecution responses to violence against women and girls* provides advice on interviewing female victims, protecting and supporting them throughout the criminal justice process and preparing them for trial.

3.3 Establishing gender-sensitive witness and victim protection measures

Victims and witnesses are cornerstones of successful justice and accountability processes for terrorism offences. Given the nature of these offences, it is important that victims and witnesses who interact with the justice process on these crimes have confidence that their safety and security will be assured, and that they will receive support and protection from intimidation and harm that perpetrators, or their supporters or others may seek to cause in order to intimidate, discourage them from testifying or silence them.

States have the responsibility to ensure that protective measures are in place for victims and witnesses who engage with justice processes. Support and protection measures should take fully into account the individual situation and needs of the witnesses. This includes gender and other variabilities such as age and disability, as well as the nature of the crime.

Victim and witness protection measures should aim to substantially reduce the threat/intimidation, even while acknowledging that they cannot guarantee their complete elimination.



Focus: Vulnerable witness

According to the OHCHR *Tool on Witness and Victim Protection*, vulnerable witnesses are witnesses and victims who are at increased risk to be psychologically harmed by testifying and/or who may face psychological or physical difficulties in testifying. Vulnerability can be determined by various parameters such as age, disability, personality, the nature of the crime a victim suffered from, previous experiences, coping skills and other psychosocial factors. These factors influence witnesses' capacity to give an accurate statement, deal with the stress of testifying, be confronted with the accused or cope with cross-examination.¹²⁴



Activity 14

Both men and women can be vulnerable witnesses. Thinking of Bangladesh's experience with JMB and neo-JMB, list at least five factors of vulnerability that are specific to female witnesses, or that are more likely to be present in the case of female witnesses.



Activity 15

Discuss the following hypothetical scenario:

“A” is a young man of twenty years who was threatened, bodily harmed and forced by a terrorist group at the age of sixteen to become a fighter. He has been captured by the authorities and is now willing to collaborate with the justice system and testify against his former comrades.

“B” is a young woman of twenty years who was recruited by a terrorist group at the age of sixteen on the false promise of a romantic relationship. She was married off to a mid-level operative with whom she stayed for four years. She has managed to escape from the group together with her two children, aged three and one, and is now willing to collaborate with the justice system and testify against her “husband”.

As senior investigator, you consider that both “A” and “B” could be very valuable witnesses. Because they would be important witnesses, you would have the possibility not only to apply for measures protecting their identity, such as the use of a pseudonym and having them testify behind a screen at trial, but also to relocate them to a safehouse for a year.

Discuss whether these measures will be equally effective in protecting “A” and “B”, and what specific challenges may arise for each of them with regard to witness protection.

¹²⁴ International Criminal Court: “*Protocol on the vulnerability assessment and support procedure used to facilitate the testimony of vulnerable witnesses*” (ICC-01/05-01/08-974-Anx2). The use of a broad definition of vulnerability avoids stigmatisation of specific groups and acknowledges the fact that any witness may be vulnerable. At the same time, it ensures that groups of victims with an increased risk of vulnerability, such as victims of gender-based violence or child witnesses, receive the appropriate attention and support to which they are entitled.

3.3.1 Gender-sensitive witness and victim protection mechanisms

Almost all witnesses and victims suffer from some degree of stress during or after their involvement in investigations and prosecutions of terrorism cases. The stress is mostly caused by the formal nature and particular demands of the proceedings, unfamiliar to most witnesses and victims, and by the gravity of the process. More importantly, the majority of witnesses and victims testify about events that had a significantly negative and often traumatic impact on their lives, their communities and societies, through which they may have lost loved ones, were injured or lost their place in the community. Others were eyewitnesses to horrific events. All these witnesses require some form of support and assistance to be able to testify truthfully. For some, it is sufficient to provide information on how the process works. Other witnesses, especially women and children, may be in need of extensive assistance and support throughout their involvement in the justice process due to their increased vulnerability.

The grave crimes against women by terrorist groups mean that there needs to be specialized interventions to assist women to go through the very difficult task of testifying about their ordeal. Further, since female witnesses are more likely to both be victims of terror and be subject to reprisals or stigma for any association with terrorist organizations such as JMB, protection of these vulnerable witnesses is particularly important. Protection of these witnesses must include not only physical safety but also access to psychological help, providing more holistic protection.

At the same time, women who have been associated with terrorist groups may feel unable to cooperate with investigations for fear of reprisal from members of the terrorist group and the social stigma of being associated with the organization. Where witnesses feel that they are unable to be properly protected, they should not be punished for refusal to testify. Short-term security gains should not be made at the expense of the rights of female witnesses.

In order to successfully engage women victims, in particular victims of sexual violence, in the justice processes, it is critically important that their particular needs and rights are properly reflected in national legal frameworks. A number of international instruments have been developed on the protection of witnesses in judicial processes.

Governments, including the government of Bangladesh, are required to address protection of vulnerable witnesses through legislation pertaining to victim assistance, focusing on psychosocial and general support measures and the use of procedural protective measures to facilitate testimony and to minimise the risk of re-traumatization.

The witness and victim protection mechanism that is in place in Bangladesh is sporadic (provided for in some laws) and piecemeal.¹²⁵ For example, the Penal Code 1860 provides for punishment for committing criminal intimidation to any person which may necessarily include the witness and the victim.¹²⁶ The Evidence Act 1872 provides for court room protection of the witnesses by prohibiting ‘indecent, scandalous and insulting questions’ put to the witnesses during cross examination.¹²⁷

In a similar vein, Section 20(6) of the Prevention of Women and Children Repression Act of 2000

¹²⁵ Hussain Mohammad Fazlul Bari, An Appraisal of victim protection in Bangladesh, *Journal of the Asiatic Society of Bangladesh (Hum.)*, Vol. 61(2), 2016, pp. 183-205.

¹²⁶ Penal Code 1860, Sections 503, 506.

¹²⁷ Evidence Act 1872, Sections 151, 152.

provides for in camera trial for ensuring privacy protection to the rape victims and witnesses. Section 20(4) provides that the concerned court must take into consideration the interests of the victim while deciding the issue of custody. Section 31 provides for safe custody of the victims of crime in safe home.

Prevention of Human Trafficking Act, 2012 makes room for a comprehensive victim and witness protection by making way for furnishing any order including a protective order for the victim and witness under the Act (Section 37). As per the law, the court may order for safe custody of the victim to government, non-government home or any other suitable place, considering duly the welfare of the victim. There is also a provision for in camera trial in appropriate cases (Section 25). Additionally, threatening the witnesses is made punishable under this Act (Section 14).



Tools: Guidelines for the Protection of Vulnerable witness

The UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, adopted by ECOSOC in 2005, offer a general framework with a focus on an interdisciplinary approach towards protection of children in justice mechanisms.

3.3.2 Witness protection during the investigation, pretrial and trial stages

Effective protection of witnesses will in many cases require measures to be taken from the start of the investigation, when a witness first enters into contact with the investigators, and throughout the pretrial and trial process. Witnesses may also require protection following their testimony at trial. This requires a legal framework, adequate resources and trained witness protection professionals. Such a comprehensive framework for witness protection appears to be lacking in Bangladesh. In the ATA 2009 as amended, there are two provisions¹²⁸ that state the possibility of recording the statements of witnesses in writing, including through conversations made online. However, it does not envisage any protective measures (such as safe custody or police protection post testimony) for witnesses.

The Law Commission of Bangladesh has made recommendation twice to the Government of Bangladesh (one in 2006¹²⁹ and the other one in 2011¹³⁰) to enact a legislation laying down a comprehensive witness and victim protection scheme, which is yet to be implemented by the Government. The higher judiciary too has urged the State to enact an overarching law in this regard.

The 2006 recommendation by the Law Commission has enumerated certain offences in respect of which a victim, a witness or related person may be given protection under the model Act that the recommendation envisaged:

1. Treason
2. Sedition
3. Murder
4. Rape

¹²⁸ ATA 2009, Sections 21 and 22.

¹²⁹ Law Commission of Bangladesh, *A Final Report on a proposed law relating to protection of victims and witnesses of crimes involving grave offences*. Available at <http://www.lc.gov.bd/reports/74.pdf>.

¹³⁰ Law Commission of Bangladesh, *A Report on a proposed law relating to protection of victims and witnesses of crimes involving grave offences*. Available at <http://www.lc.gov.bd/reports/108-Victim.pdf>.

5. Dacoity
6. Kidnapping
7. Abduction
8. Extortion
9. Robbery or Hijacking involving the taking of a Motor vehicle
10. Offences under Section 19A of the Arms Act, 1878
11. Trafficking of Women and Children
12. Abduction for commercial exploitation and sexual abuse of women
13. Money laundering
14. Smuggling of foreign exchange, gold and prohibited goods

An exhaustive list as such may prove to be counterintuitive as witnesses and victims of certain other offences not included in the exhaustive list will remain outside its purview. The 2011 recommendation, on the other hand, does not provide for an exhaustive list of offences as such. It envisages the enactment of a comprehensive law in light of certain international instruments (e.g. it made reference to Witness Protection Bill of UNODC of 2008, Manual on Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime, the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985).

In the *Bangladesh National Women Lawyers Association (BNWLA) vs Bangladesh*¹³¹ case, where the Government was urged to undertake steps to prevent sexual harassment against women at the place of work or study, the High Court Division issued specific guidelines. One of them stipulated that the Government shall take immediate steps to enact a law for introduction of a witness and victim protection scheme for effective protection of victims and witnesses of sexual harassment as well as the people who come forward to resist sexual harassment. While this guideline set an important milestone, its replication is necessary in the context of other offences.



Activity 16

- Does the Bangladesh legislation contain specific provisions for witness protection? E.g. has the Witness Protection Act drafted in 2011 been pursued and will it be enacted?
- Do the Prevention and Suppression of Human Trafficking Act, 2012 and three Rules under the Act, make provision for witness protection measures?
- Do the Suppression of Violence against Women and Children Act 2000 and the Domestic Violence (Prevention and Protection) Act, 2010 make provision for measures to protect victims of SGBV when they act as witnesses?
- Are there any provisions in the Bangladeshi legislation focused on the needs and rights of women acting as witnesses? What provisions would be most urgently needed in your opinion?

¹³¹ 14 BLC 703.



Activity 17

Can the court order measures as it deems fit to keep the identity and address of the witness or person secret in order to protect witnesses at risk? What are the preconditions that must be satisfied to do so? Could the court equally order such measures where there is no threat to the life of the witness, but there is a risk that the witness may suffer serious psychological damage if she has to testify without protective measures?

Consider the following hypothetical scenario:

“W1” is a woman who was abducted by a terrorist group and exploited for sexual and domestic services for two years. She is now to testify in the trial of some of the terrorist group members involved in her exploitation. Could the court order protective measures under any Bangladesh law on the ground that making the identity of the witness public may endanger her reintegration into the community?

It is to be noted that keeping witness identities secret from the defendant (so-called “anonymous witnesses”) is a measure that will in many cases have a considerable adverse impact on the ability of the defendant to challenge the evidence against him and, therefore, on the right to a fair trial. It must, therefore, remain an exceptional measure.



Reference

Witness protection measures are discussed from the perspective of defence rights in Module 4 of the *UNODC Counter-Terrorism Legal Training Curriculum on Human Rights and Criminal Justice Responses to Terrorism*, section 5.2.

3.3.3 Fundamental principles for the psychological protection of victims and witnesses

Aside from the need for a strong legal framework, and resources and institutions to put it into practice, there are a number of important principles that should be followed in order to assure psychological protection of victims and witnesses – many of them of particular relevance when dealing with female witnesses:

- *Focusing on “no-harm” and increasing control and empowerment.* All measures taken to protect and support witnesses and victims should contribute to the implementation of a no-harm principle. Witnesses should not suffer any psychological or physical harm, traumatization or suffering as a consequence of their involvement in the justice process. Cooperation with the witness, including support and protection, should not be started if the required follow-up cannot be provided.
- *Early determination of vulnerability and follow-up throughout involvement.* An early determination of the level of vulnerability and the capacities of the witness is critical in order to provide adequate support and protection throughout their involvement with the justice process.
- *Confidentiality and informed consent.* Confidentiality is among the first and most critical tools for witness protection. Aside from its importance to minimize the physical risk to witnesses, it is also a key condition to ensure psychological protection of vulnerable witnesses.
- *Staffing requirements and training.* All staff dealing with vulnerable witnesses need to have sufficient understanding of how to deal with them. Investigators need to receive training on interviewing techniques, especially of victims of sexual and other forms of

gender-based violence and child witnesses. Staff dealing with support and protection of vulnerable witnesses need to understand the concept of vulnerability and should be trained to be sensitive for and respond to these witnesses' needs, recognize their capacities and contain common challenges that may arise while handling the witnesses.

- *Protection measures at pre-investigation phase.* A baseline assessment needs to include extensive information about specific vulnerabilities of potential witnesses. This is particularly the case with conflict-related sexual violence, it is important to assess the impact the crimes had on these groups of victims, in particular the social impact. For example, after mass abductions, rapes, forced marriages and forced pregnancies, victims of sexual violence victims may face social rejection and stigma.



Activity 18

Designing Witness Protection Measures in Bangladesh

Amina is a 20-year-old woman who was forced to marry a terrorist fighter, who abused her physically and sexually. Amina managed to escape from her husband when the terrorist group was moving camps. She reported to the military in Bangladesh and helped the military intelligence by providing information on the movement of the groups.

Amina would be willing to cooperate also with the justice system. She is however afraid of reprisals from the terrorist group and their sympathizers.

- In small groups, discuss the protection measures required to enable Amina to participate in the justice process as victim and as witness. Discuss legal provisions, institutional arrangements and resources required.
- Considering how best to provide for her physical and psychological well-being, what principles should be taken into consideration?
- How does Amina's history as the forced wife of a terrorist group member affect her status as a witness and the kind of protection she may need?



Activity 19

A counter-terrorism unit investigating a recent attack by a terrorist group on a village has identified a young woman living in the town who is an eyewitness to the attack and who states that she recognized several of the attackers as former residents of the town. She says she wants to assist the investigators, but fears that if she does cooperate with law enforcement, she and her family will be targeted by the terrorist group. Several of her friends have already been killed or seriously hurt by terrorist insurgents.

- The woman is not a victim of sexual or gender-based violence. Do you think that there are nonetheless gender aspects to her protection needs as a potential witness?
- Does this woman qualify as a vulnerable witness and why?
- How can investigators apply the principles when formulating effective witness protection for this particular witness?
- What should investigators do if this witness refuses to testify in a trial against alleged terrorist group members?

3.4 Self-assessment questions



Self-Assessment Questions

- Name five elements of international law and good practice regarding gender sensitive searches of persons and residential premises.
- Name three Bangladeshi law provisions regulating search and seizure powers which contain a gender element.
- What gender-sensitive measures can be taken when interviewing female victims, witnesses and suspects in terrorism cases? List and explain at least three.
- List at least three factors of gender-related vulnerability of witnesses in terrorism cases at court in the Bangladeshi context. What gender-sensitive measures can be taken to protect them?
- Discuss the relevance and the limitations of ATA 2009 to the protection of a female victim of sexual exploitation by terrorist groups.

Glossary

Gender ‘Gender’ refers to the roles, behaviours, activities, and attributes that a given society at a given time considers appropriate for men and women. In addition to the social attributes and opportunities associated with being male and female and the relationships between women and men and girls and boys, gender also refers to the relations between women and those between men. These attributes, opportunities and relationships are socially constructed and are learned through socialization processes. They are context/time-specific and changeable. Gender determines what is expected, allowed and valued in a woman or a man in a given context. In most societies there are differences and inequalities between women and men in responsibilities assigned, activities undertaken, access to and control over resources, as well as decision-making opportunities. Gender is part of the broader sociocultural context, as are other important criteria for sociocultural analysis including class, race, poverty level, ethnic group, sexual orientation, and age.

Gender mainstreaming Gender mainstreaming is the chosen approach of the United Nations system and international community toward realizing progress on women’s and girl’s rights, as a sub-set of the human rights to which the United Nations is dedicated. It is not a goal or objective on its own; it is a strategy for achieving equality for women and girls in relation to men and boys. Mainstreaming a gender perspective is the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a way to make women’s as well as men’s concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality.

Gender-based discrimination against women This refers to any distinction, exclusion or restriction, which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women of human rights and fundamental freedoms, even where discrimination was not intended. Direct discrimination against women constitutes different treatment explicitly based on grounds of sex and gender differences. Indirect discrimination against women occurs when a law, policy, programme or practice appears to be neutral in so far as it relates to men and women, but has a discriminatory effect in practice on women because pre-existing inequalities are not addressed by the apparently neutral measure.

Gender-sensitive approach. A gender-sensitive approach uses a gender perspective to understand differences in status, power, roles and needs between males and females, and the impact of gender on people’s opportunities and interactions.

Gender stereotype A gender stereotype is a generalized view or preconception about attributes or characteristics that are or ought to be possessed by, or the roles that are or should be performed by, women and men.

Wrongful gender stereotyping This is the practice of ascribing to an individual woman or man specific attributes, characteristics or roles by reason only of her or his membership in the social

group of women or men, which results in a violation or violations of human rights and fundamental freedoms. The harm is caused by the application of a stereotypical belief to an individual (e.g., through a State enforcing a gender stereotype into a law) in such a way as to negatively affect the recognition, exercise or enjoyment of their rights and freedoms.

Sex (biological sex) The physical and biological characteristics that distinguish males and females.

Sexual and gender-based violence This refers to any harmful act that is perpetrated against one person's will and that is based on socially ascribed (gender) differences between males and females. It includes acts that inflict physical, mental, or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty, whether occurring in public or in private life. Sexual and gender-based violence entails widespread human rights violations, and is often linked to unequal gender relations within communities and abuses of power. Acts of sexual and gender-based violence may be inflicted upon women, men, girls and boys.

It comprises the following two notions:

Sexual violence which encompasses any sexual act, attempt to obtain a sexual act or acts otherwise directed against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting. Sexual violence takes multiple forms and includes rape, sexual abuse, forced pregnancy, forced sterilization, forced abortion, forced prostitution, sexual enslavement, forced circumcision, castration and forced nudity.

Gender-based violence which is considered to be any harmful act directed against individuals or groups of individuals on the basis of their gender. Other forms can include acts of physical violence, domestic violence and harmful traditional practices. Accordingly, while sexual violence is a form of gender-based violence, gender-based violence is a broader category of crime and may be perpetrated through non-sexual acts (including for example, physical violence).

Conflict-related sexual violence This term refers to incidents or patterns of sexual violence, that is rape, sexual slavery, forced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity against women, men or children. Such incidents or patterns occur in conflict or post-conflict settings or other situations of concern (e.g., political strife). They also have a direct or indirect nexus with the conflict or political strife itself, that is, a temporal, geographical and/or causal link. In addition to the international character of the suspected crimes (which can, depending on the circumstances, constitute war crimes, crimes against humanity, acts of genocide or other gross violations of human rights), the link with conflict may be evident in the profile and motivations of the perpetrator(s), the profile of the victim(s), the climate of impunity/State collapse, cross-border dimensions and/or the fact that they violate the terms of a ceasefire agreement.

Annexes

Annex A: List of relevant UNODC publications and select Bangladeshi laws

The current publication should not be viewed in isolation from other publications by UNODC, which can serve as complementary reading and training materials. The complementary publications should be taken into consideration for a more comprehensive approach towards legal responses to terrorism and criminal justice capacity-building to prevent and counter terrorism and violent extremism leading to terrorism:

- Supporting Legal Responses and Criminal Justice Capacity to Prevent and Counter Terrorism
- Legislative and Capacity-Building Assistance to Prevent and Combat Terrorism
- CTED: Guidelines to facilitate the use and admissibility as evidence in national criminal courts of information collected, handled, preserved and shared by the military to prosecute terrorist offences
- Nigeria Training Module on Gender Dimensions of Criminal Justice Responses to Terrorism
- UNODC Guidelines for the Central Asian PVE Network: Design and Management of Programmes to Prevent and Counter Violent Extremism
- Handbook on gender dimensions of criminal justice responses to terrorism
- Good Practices in Supporting Victims of Terrorism within the Criminal Justice Framework
- Guidance Manual for Member States on Terrorist Financing Risk Assessments
- Investigation, Prosecution and Adjudication of Foreign Terrorist Fighter Cases for South and South-East Asia
- Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups: The Role of the Justice System
- Foreign Terrorist Fighters: Manual for Judicial Training Institutes, South Eastern-Europe
- The Criminal Justice Response to Support Victims of Acts of Terrorism
- The Use of the Internet for Terrorist Purposes
- Practical Guide to Draft Cooperation Requests to Member States of the Multi-Agency Task Force of the Middle East and North Africa Region (Arabic only)
- Lutte contre le terrorisme dans la région du Sahel: cadre juridique, techniques d'enquête et coopération policière (French only)
- Digest of Terrorist Cases
- Frequently Asked Questions on International law Aspects of Countering Terrorism
- Guide for Legislative Incorporation of the Provisions of the Universal Anti-Terrorism Instruments
- Handbook on Criminal Justice Responses to Terrorism
- International Instruments related to the Prevention and Suppression of International Terrorism
- Legislative Guide to the Universal Legal Regime Against Terrorism
- Manual on International Cooperation in Criminal Matters related to Terrorism
- Preventing terrorist acts: a criminal justice strategy integrating rule of law standards in implementation of United Nations anti-terrorism instruments
- Practical Guide to extradition and mutual legal assistance for member states of the Indian Ocean

Commission (Comoros, Réunion, Madagascar, Mauritius, Seychelles)

- Practical Guide on carrying out effective extradition and mutual legal assistance requests in criminal matters for countries of the Sahel Regional Judicial Platform (Burkina Faso, Mali, Mauritania, Niger)
- Case management tool to conduct investigations of the financing of terrorism offences in Colombia (Plan de investigación en financiación del terrorismo) (Spanish only)
- Guide for Colombia on the Legal Regime against Terrorism and its Financing (Guía del régimen jurídico contra el terrorismo y la financiación del terrorismo para Colombia) (Spanish only)

In the same vein, the laws that have been mentioned in the present module are not exhaustive and form part of a set of different laws, inter alia:

- Mutual Legal Assistance on Criminal Matters Act 2012
- Money Laundering Prevention Act 2012
- Anti-Terrorism Rules 2013
- Children Act 2013

Annex B: List of participants of the Online Expert Round Table on 10 August 2020 to review and discuss the draft Bangladesh training module on gender dimensions of criminal justice approaches to terrorism

The Round Table was led by the Training Module drafters Ms. Solongo Dolgor, Programme Officer, Terrorism Prevention Branch/UNODC, Ms. Marina Yakunina, Programme Officer, UNODC Programme Office in Bangladesh, and Ms. Psymhe Wadud, Consultant, UNODC Programme Office in Bangladesh.

The following participants of the Round Table contributed to the review and upgrade of the Training Module:

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- Mr. Al Asad Md. Mahmudul Islam, Deputy Director (Training), Judicial Administration Training Institute
- Dr. Amena Mohsin, Professor, Department of International Relations, University of Dhaka
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